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No.

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

JOHN J. ADKINS, ET AL.,
Petitioners,

v.

GENERAL MOTORS COPORATION,ET AL
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT FOR APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

I. Whether Certiorari should be granted to resolve a conflict between the Fifth and Sixth Circuits over application of the Court's analysis in Section 301 preemption cases as it applies to state common law fraud and implied contract claims where the Sixth Circuit preempts fraud claims that merely "relate" to the collective bargaining process and the rule in the circuit requires preemption of individual contracts whenever the employee also has a collective one, whereas the rule in the Fifth Circuit analyzes preemption as dependent upon actual need to "interpret" and to be "substantially" dependent upon a CBA so that fraud claims based upon oral misrepresentations, or independent contract claims based upon matters not directly covered in the CBA, are not to be preempted.

II. Whether Certiorari should be granted to establish appropriate judicial standards for defining or applying controlling terms previously articulated by the Supreme Court in cases involving Section 301 preemption where petitioners assert that, at worst, their state claims involve "parallel [state] rights" that only "tangentially concern" a provision in the collective bargaining agreement and is only of "peripheral concern" to federal interests.

III. Whether Certiorari should be granted to clarify Section 301 preemption principles set forth in Caterpillar v. Williams and Lingle v. Norge Division of Magic Chef as applied to state common law fraud claims, to determine: (1) the extent a provision in a collective bargaining agreement may provide relevant evidence towards an element without preempting the action, (2) appropriate analysis of common (as compared to statutory) law

elements and , (3) survivability of state claims based upon conduct and oral representations outside the collective bargaining agreement..

IV. Whether the Circuit's rule that a contract relationship cannot exist outside of a collective bargaining agreement is a departure from the standards set forth in Caterpillar v. Williams which recognizes independent contractual relationships and further, whether the lower court's ruling that Section 301 preemption occurs whenever "a court adjudicating [trying the] claim must [eventually] determine rights arising under [or relating to] a collective bargaining agreement" is a departure from the standards set forth in Lingle v. Norge Division of Magic Chef which recognizes a valid state claim may include both interpretation of a collective bargaining agreement and a separate state law analysis that does not turn upon the agreement.

V. Whether under the rationale of Farmer v. Carpenter, a court's preemption analysis may consider discrimination as a factor in the totality of circumstances alleged to constitute outrageous conduct in a state action for intentional infliction of emotional distress and, further where the district court finds the alleged conduct survives preemption, whether said finding can be overturned on appeal by extending preemption analysis to include assessing the merits of outrageousness.

PARTIES TO PROCEEDING

1. For Petitioner: John Adkins

As petitioners number 817 persons they are setforth separately in

Appendix B

2. Defendant: General Motors Corporation (GMC)

3. Defendant: International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC (IUE)

4. Defendant: Local 801, International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC (Local 801)

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JURISDICTIONAL STATEMENT

The judgement of the Court of Appeals for the Sixth Circuit was issued on October 15, 1991 (App. B). This Court has jurisdictional pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

Article VI -(supremacy clause)

> This Constitution, and the Law of the United States which shall be made, under the Authority of the United states, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendment V- Due Process Clause

> No person shall...be deprived of life, liberty, or property, without due process of law... .

Amendment X- Reserved Powers to States

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

United States Code (U.S.C.)
Section 301, Labor Management
Relations Act, 29 U.S.C. Section 185(a)

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Federal Rules of Civil Procedure (Fed. R. Civ. Pro.)

Rule 12(b)(6)

(b) Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, crossclaim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: ...(6) failure to state a claim upon which relief can be granted ... .

Rule 56(a),(b)

(a) For claimant

A party seeking to recover upon a claim, counterclaim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary

judgment by the adverse party, move with or without supporting affidavits for a summary judgement in his favor upon all or any part thereof.

(b) For defending party.

A party against whom a claim, counterclaim or cross-claim is asserted or a declaratory judgment is brought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

STATEMENT OF THE CASE:

This case concerns the proper application of standards and terms announced by the Court in evaluation of federal preemption of state claims under Section 301 of the Labor Management Relations Act, 29 USC 1985 (Section 301/LMRA). The case is also illustrative of the conflict, confusion and entrenched debate over jurisprudence which divides the circuits on the preemption issue.

The litigation arose during a period of economic recession, corporate reorganization and employee layoffs from 1979 into 1981. In the last decade, the 817 plaintiffs/petitioners steadfastly sought to complete only the first hurdle towards trial on the merits. Years after the complaint was filed, federal preemption was imposed to prevent the litigation. Initially the plaintiffs sought resolution of both federal and pendent state claims in an action filed in district court in January, 1982. The federal claims were deemed

hybrid Section 301 action. Upon defendants' (respondents') motion, the federal claims were found time barred under what was then a new rule that tracked the six month limitations period of section 10(b) of the National Labor Relations Act (NLRB), instead of the six year statute of limitations recognized prior to Delcostello v. International Bhd. of Teamsters (1983) 462 U.S. 151. See, Adkins v. GMC (S.D. Ohio 1983), 523 F. Supp. 1188, aff'd. 769 F.2d 330. However, many of the initial state claims survived. Adkins v. GMC (S.D. Ohio 1983), 556 F. Supp 452. Declining to exercise pendent jurisdiction, the district court dismissed the state claims without prejudice.

Meanwhile, the original plaintiffs were joined by several hundred others who had come to realize how deeply they were misled, the scope of their injuries and resulting damages. On September 19, 1983, this action was instituted in the Common Pleas Court for Montgomery County Ohio, Case No. 83-2596. Expanding upon the

original complaint, recovery was sought upon state-based claims of fraud and misrepresentation (count II), implied independent contract and promissory estoppel (count III), intentional infliction of emotional distress (count IV) and loss of consortium. The case was based, on actions and rights outside the collective bargaining agreement ("CBA"). Generally, each claim was based on two separate courses of conduct: The most egregious and independent occurred three months after the CBA was ratified and continued for a year. The other course of conduct occurred prior to the ratification vote. In order to distinctly understand the scope and independence of petitioners' claims it is important to understand the relationship and history of the parties. Otherwise, there is danger the claims will be taken out of context and lumped into a catchall section 301 action, as was done in the appellate court below.

The background of the case touches upon many relationships some of which happen to be

member-union, employee-employer, union-management, but these are not controlling. The dominant relationship was less "arms length"; it was one founded upon a nature of trust, honesty, personal commitment essentially, a fiduciary relationship.

Prior to 1971, General Motors Corporation (GMC) operated plants in the cities of Dayton and Moraine, Ohio under its Fridgidare Division. Workers were unionized through the International Union of Electrical, Radio and Machine Workers, AFL-CIO- CLC (IUE) and one of its area affiliates, Local 801. The operation of the plants involved both appliances and automobile air conditioners. Wages for both types of work were keyed, not to the appliance industry, but to the higher scale of the automotive industry because workers readily transferred, or "flowed," from appliance to automotive jobs and back again.

In 1971 GMC negotiated a lower wage scale for workers on appliance projects. However the above noted custom and practice of "flowing" continued. Workers flowed or transferred to automotive project jobs (now at a higher scale) when openings occurred or to flow or transfer back to the appliance jobs to avoid layoff by bumping those with less seniority. In 1974 GMC reorganized, splitting the automotive air conditioning facilities from Fridgidare and into Delco Air Conditioning (later known as Harrison Radiator Division). Still the flow or transfer practice continued.

This flow arrangement was not memorialized until September 1976 when it was formally incorporated in the new CBA which ran from September 1976 until September 1979. This memorialization of the flow practice was known as the "Bridge Agreement." However, there were some changes from past custom. Flow rights were to continue only until the occurrence of a condition which would be satisfied by GMC,

offering each then existing Fridgidare employee the opportunity to permanently transfer to the new Delco Division plus the hiring of 900 additional new Delco workers. As a practical matter it was not foreseeable that this condition would be satisfied for many years (Comp. para. 19-23,27).

By 1979, of the 5,500 original Fridgidare employees covered under the CBA's Bridge Agreement, 2,000 transferred to Delco. Plaintiffs herein are from this group. The remaining 3,500 for various reasons had yet to exercise rights under the Bridge Agreement. The 2,000 were replaced at Fridgidare by 2,500 new hirees who had no rights under the Bridge Agreement

In early 1979, GMC announced it was closing its Fridgidare division, selling off the assets but retaining the Dayton and Moraine plants for conversion to automotive under the Chevrolet Division. Petitioners allege (<u>as background not</u>

as the basis for state suit) that a conspiracy transpired among the Respondents, with the objectives of maintaining power and control in deprivation of the rights of many of the 2,000 as employees and under federal law.

From the union's perspective, the closing would idle 6,000 members (above noted 3,500 plus the 2,500 newly hired). These layoffs would effect the power, prestige and financial muscle of Local 801. On the other hand, the two year conversion process meant jobs, and after conversion - more jobs, all needing union representation. IUE wanted to maintain its status as bargaining agent when the plants reopened but feared it would lose its position to the United Auto Workers. GMC, for its own reasons, secretly wanted to retain IUE as the bargaining representative. GMC had the additional objectives of dividing labor and removing senior employees (petitioners) who were at a higher wage scale, replacing them with new lower paid workers. The plan was to abrogate the Bridge Agreement, which the unions

were willing to sacrifice to maintain their private interest. In the process of obtaining these objectives, however, the Respondents committed acts which serve as the basis for this suit (Eg. Compl. para 15,16,25-27 and 43-48).

The conspiracy came to life in a series of meetings, between January 31 and February 20, 1979, among GMC, IUE and Local 801. IUE and Local 801 would be recognized as the bargaining representative at the new Chevrolet plants. However, only laid off Fridgidare workers were to be recalled; either as temporary workers for converting the buildings or, after conversion, as permanent factory workers. The Bridge Agreement was to be abrogated. These meetings did not include negotiation of layoffs which GMC was to institute at the Delco plant later that year.

Through overt acts, omissions, fraudulent misrepresentations and concealments with the objective of excluding the 2,000, jointly and

individually, from the notification and ratification process; respondents succeeded in abrogating the Bridge Agreement. To facilitate the conspiracy two membership meetings were called. The first was a hurried one, on short notice, for February 23, 1979. This obstensively was to approve the effects of Fridgidare layoffs. (Comp. para. 29,33-34). The second, for September 18, 1979, was ostensibly to approve the Delco CBA.(Comp. para.35) Neither meeting discussed the abandonment of the Bridge Agreement. It was concealed. The Delco CBA did not mention the abandonment of the Bridge Agreement, it just omitted the provision. The plan was to respond to any inquiries by insinuating that the customary "flow" practice that existed before the 1976 Bridge Agreement was intact or the Bridge otherwise still existed. It is the manner of respondent's behavior towards petitioners during this time which serves the basis of the emotional distress claims. (Complaint para. 30-37).

The remaining state claims arise from separate events occurring between February 1980 through January 1981. Shortly after ratification of the local Delco CBA, Respondent GMC announced layoffs at the Delco plant. Through January 1981 respondents continued to try to keep secret the abrogation of the Bridge Agreement. The truth started to surface in February 1980 when petitioners (laid off Delco Workers) were not recalled, but instead were replaced by former Fridgidare workers. Rather than being straight forward and honestly telling petitioners they had lost their jobs, respondents made representations and innuendoes that the jobs would be forthcoming. Petitioners were told all they had to do was be patient and quietly wait. They were reminded of the old custom of "flowing" and told nothing of the destruction of the Bridge Agreement. They were reminded of new Chevrolet plants. Promises of employment were made, individually and in groups. So petitioners waited, always being reassured by those who cultivated their trust that jobs would be theirs.

Respondents planned the chaos and turmoil surrounding plant closings, openings, and thousands of job transfers (including temporary plant conversion jobs). The respondents' plan prospered while petitioners were told to wait.

Finally, in January 1981 the Chevrolet plants were fully converted. Workers from Fridgidare, including the previously mentioned 2,500, were called in. The Plaintiff-Petitioners began to realize they were duped as they learned about how the Bridge agreement was destroyed without their knowledge, how the custom of "flowing" that existed before was abandoned, and most importantly how promises of jobs were empty lies. Petitioners acted and forebore in reliance of respondents' promises and representations of jobs. Petitioners were not merely misled, but suffered significant injuries; some were economically ruined, others psychologically injured by those whom they trusted who, in laughing admission, later called them cry-babies and ridiculed them. Petitioners stated causes of

action in implied contract/promissory estoppel, fraud and misrepresentation and some of their emotional distress claims arise out of this conduct and oral misrepresentations. (Comp.para 39-42, 73-79, 89)

Asserting federal question, respondents removed the case to district court. Petitioners moved to remand. On January 20, 1984, portions of the complaint were ordered remanded, as arising under state law. Adkins v. GMC (S.D. Ohio 1984), 578 F. Supp 315. On March 9, 1984, asserting the six month statute of limitations, respondents moved for summary judgment for the portion of the complaint deemed to arise under Section 301. Not until June 26, 1987 was the motion granted. At that time, by the attached letter, respondents were invited to move for reconsideration of the January 20, 1984 decision granting petitioners motion to remand.

On July 8, 1987 respondents moved for reconsideration. Petitioners response (then and

later on appeal), essentially was that the state claims were independently based and not inextricably intertwined or substantially dependent on the terms of the CBA and, at worse, involved parallel and supplemental state causes of action that only tangentially concerned a CBA, yet foster advancement of deep local concerns.

On August 16, 1988 the district court preempted the case except for the emotional distress and consortium claims in relation to paragraphs 30, 33, 36 and part of 31 in the complaint. Reasoning that the conduct was not within Section 301, the district court ordered a remand. Respondents moved for summary judgment over the remainder of the case, again asserting statute of limitations. This motion was granted on January 24, 1990, but the district court overruled any reconsideration of its remand order.

Petitioners appealed the preemption of their claims to the Sixth Circuit. Respondents cross appealed.

On October 15, 1991 the Sixth Circuit affirmed the preemption of petitioners state-based claims of fraud and misrepresentation, breech of implied contract and tortious interference, and expanded the order to engulf the emotional distress and consortium claims which the district court found outside the scope of Section 301. Adkins v. GMC (6th Cir. Oct 15, 1991) unreported case no.s. 290-3164, -3234, -3235. (herein after referred to as Adkins).

REASONS FOR GRANTING THE WRIT

I. FIRST QUESTION PRESENTED

Petitioners submit that certiorari should be granted to resolve a conflict between the Fifth and Sixth Circuits. The conflict centers on the meaning implied in terms adopted by the Court to guide the lower courts in analysis of state law claims with preemption considerations embodied in section 301 . This is not to say the lower court failed to use some of these terms. However, the meaning was diametrically opposed to the understanding advanced by petitioner, supported by decisions of other circuits and by this Court. When read with other Sixth Circuit cases, the decision reflects a jurisprudence which prohibits union members from enjoying rights, both in the nature of contract and other torts, outside the collective bargaining agreement (CBA) and has the effect of absolutely immunizing unions from state-based suits in fraud, misrepresentation, and tortious interference of contract .

The Sixth Circuit decision also appears in conflict with Caterpillar v. Williams (1987), 482 U.S. 386, 396-97 n. 10 ("not every dispute concerning employment or tangentially involving a provision of a collective bargaining agreement is preempted... . Even under section 301 we have never intimated that any action merely relating to a contract...arises exclusively under that section.")

Petitioners' analysis begins with the Sixth Circuit's disposal of their contract claims and the circuit's jurisprudence. The conflict with a recent Fifth Circuit decision is then examined Wells v. G.M.C. (S.D. Miss 1988) 721 F. Supp. 107, affd (5th Cir. 1989), 881 F.2d 166, reh. den. 887 F.2d 1083, cert.den. _____ U.S._____, 110 S. Ct. 1959. (Wells). The factual similarities of the two cases will be discussed as a prelude to analysis of the lower court's disposal of petitioners' fraud and related claims. This analysis reveals that the Sixth

Circuit's understanding is in conflict with other circuits. For example, the Wells case limits preemption of state claims to those which "substantially" depend on analysis or interpretation of a CBA, the Sixth Circuit preempts whenever it perceives the claim might "relate" to a CBA. Adkins supra at 9.

> "Individual contracts cannot subtract from collective ones, and whether under some circumstances they may add to them in matters covered by the collective bargain, we leave to be determined by appropriate forums under the law of contracts applicable... We know of nothing to prevent the employee's making any contract provided it is not inconsistent with a collective agreement or does not amount to or result from or is not a part of an unfair labor practice.".

J.I. Case Co. v. Labor Board (1944),321 U.S. 332, 339. Forty years later some of these principles were applied by the Court to prevent Section 301 preemption of a state contract claim

by union employees under a CBA. Caterpillar Inc. v. Williams, supra. In that case the Court stated, "a plaintiff covered by a collective bargaining agreement is permitted to assert legal rights independent of that agreement, including state contract rights, so long as the contract relied on is not a collective bargaining agreement." Id. at 396. The Court further noted that the CBA could be raised as a defense, id. at 397-398, such defenses have no bearing on preemption, id. at 398-99, and if the CBA relates to the plaintiff's claim it might not ultimately be a sufficient defense. Id. at 396-97, n.10.

Petitioners' implied contract and related claims, are based on representations made outside the then existing CBA. However, the lower court's analysis of the Caterpillar case emphasized "the defendant employer might successfully raise federal preemption as a defense". Id. at 13-14. The lower court then noted potential defenses in the instant case, id. at 17-18, and summarily preempted petitioner's state contract and tortious

interference claims, but failed to consider that the "bridge agreement" mentioned in the complaint was not part of the existing CBA. As to petitioners' claim that the contract was outside the collective bargaining agreement and events directly relating thereto, or at worse, was only 'tangentially related,' the lower court indicated that such considerations were irrelevant. Id. at 17, 19-20 .

The lower court's decision appears anchored in the jurisprudence of other cases, authored by the same judge at approximately the time appellate briefs were filed. Therein, it was stated "the collective bargaining process prohibits a bargaining unit employee from engaging in separate negotiation with the company and precludes any actions to enforce such agreements." Fox v. Parker Hannifan Corp., (6th Cir. 1990), 914 F.2d 795, 801 (preempting implied contract and promissory estoppel claims predicated on alleged company and union promises made directly to plaintiff) (Boggs, J.).

The rule announced by the Sixth Circuit in the Fox case permeated the treatment of petitioner's claim. Further, Sixth Circuit jurisprudence relative to Section 301 insinuates union immunity. Dicta found in another case indicates that, while common law actions against employers may escape preemption, "[o]nly claims based on union discrimination in the employment setting are subject to the preemption principle, because they realistically threaten to interfere with the federal regulatory scheme." Krafel v. Pepsi Cola Bottlers (6th Cir 1990), 135 LMRM 2520, 2525-2526 (Boggs J). See also, Jones v. G.M.C. (6th Cir. 1991), 939 F.2d 380, 383 (Section 301 preempts state law "when... employees covered by a CBA rely upon the existence of a separate individual employment contract giving rise to state law claims.")

Examination of the underlying facts and legal analysis in the Wells case with the instant case reveals a conflict. Both cases involve a class action suit by former G.M. automotive

employees. The employees were covered under a collective bargaining agreement and were represented by IUE and a local affiliate during the early 1980's, a period of downturn in the automotive industry. Wells, supra. F. Supp at 109. Adkins , supra at 4-5. Both cases involve claims that, when layoffs were occurring, oral representations and promises were also made which were believed and resulted in plaintiffs' either action or forbearance of action in reliance thereupon and to their detriment. However, some of the behavior complained of in the Wells case was more or less clandestine than in the instant case. Specifically, the plaintiffs in the Wells cases were told they were facing permanent layoff. Wells, supra. In that context, the Wells plaintiffs were offered a plan, instituted by GM and IUE, whereby union members could sell off their seniority rights and be voluntarily terminated ("VTEP"). The VTEP plan was made a supplement to the collective bargaining agreement. Id., 721 F. Supp. at 113. The Wells plaintiffs alleged that in meetings on VTEP,

representations were made that those choosing to sell their seniority could later compete for new job openings if they arose. These representations were relied upon but, after selling their rights, plaintiffs were barred from applying for new openings. A state suit for breach of implied contract and fraud was removed to federal court.

The difference in the decision of the Fifth Circuit, holding fraud and contract claims were not preempted, and the decision of the Sixth Circuit, preempting petitioners' fraud, contract and tortious interference claims is simply a function of a difference in approach to Supreme Court precedent. For example, the Wells case emphasized, that Section 301 preemption was dependent upon finding that "the resolution of the particular dispute must be substantially dependent upon analysis of the terms of a collective bargaining agreement." Wells, supra F.2d at 173 (emphasis original). The Sixth Circuit's preemption of petitioners' claims swept the significance of the word "substantial" under the

rug. The Sixth Circuit imposed preemption whenever it believes the state claim merely "relates to various collective bargaining agreements." Adkins, supra at page 9. The failure of the Sixth Circuit to attach significance to the Supreme Court's use of terms such as, "substantially" is not an isolated example. The Fifth Circuit also emphasized several other concepts announced by the Supreme Court which are relevant to petitioners' claim but disavowed or ignored by the Sixth Circuit.

The Wells decision also followed the Supreme Court's pronouncement that "not ...every state-law suit asserting a right that relates in some way to a provision in a collective bargaining agreement is preempted." Wells, supra F.2d at 173 n.13, "Section 301 is not implicated unless resolution of the state claims requires interpretation of a collective bargaining agreement...[and accordingly] a plaintiff covered by a collective bargaining agreement is permitted to assert legal rights independent of that

agreement, including state law contract rights, so long as the contract relied on is not a collective bargaining agreement." Id. at 173 (emphasis original) (quoting and citing Lingle v. Norge Div. of Magic Chef, Inc (1988), 486 U.S. 399, and Caterpillar Inc. v. Williams, supra.) As noted above, Sixth Circuit jurisprudence disavows the possibility, or even the concept, of union employees having a contract independent of the collective agreement. See, Fox v. Parker Hannifan Corp. supra. This jurisprudence resulted in the summary preemption of petitioners' state contract claims that were independent of, and subsequent to, the collective bargaining agreement. Oral representations are without effect even if detrimentally relied upon by this approach.

The intercircuit conflict also extends to petitioners' fraud claims. The Wells decision focused on the basis of the claim, to wit, oral promises and oral representations that VTEP contained provision allowing for future

employment. The Wells court noted that actually, except for potentially minor provisions, VTEP was essentially silent on future employment. The parties did not dispute the absence of any provision on the right to future employment. Accordingly, and in reality, "the dispute is a highly fact bound one concerning what was said, or promised, at the meeting. The defense to such a claim is not that the VTEP might be construed to say otherwise; rather, it is that `we made no such representation' or that `no such representation could have been made given the VTEP's provisions.' " Wells, supra F.2d at 173.

The Sixth Circuit's approach to petitioners' fraud claims is in sharp contrast with the Wells case. Petitioners' claims revolve around two groups of oral representations and separate detrimental reliance; one prior, the other, many months after, ratification of the CBA. The core of theses oral misrepresentations relates to a bridge agreement which all parties agree was not contained in the

pertinent collective bargaining agreement. Nonetheless, the Sixth Circuit held "[t]he fact that these [oral] misrepresentations took place outside the context of collective bargaining is immaterial." Adkins, supra at 17. There was no discussion about petitioners' assertion that, at worse, the fraud claim was merely tangentially related to any collective bargaining agreement, the significance of the state interest, or even that the action was only of peripheral concern to federal interest.

The conflict is not isolated between the Fifth and Sixth Circuits. Cases from other circuits support petitioners' position and disavow the approach of the Sixth Circuit. Anderson v. United Auto Workers (D.Kan. 1990), 738 F. Supp 441, 442-44 (employing a balancing test and holding a state tort action against defendants, union and employer is not preempted merely because it "relates" to a provision in a collective bargaining agreement.); Karetnikova v. Trustees (D.Mass. 1989), 725 F. Supp. 73,79 (employing a

balancing test in denying preemption and noting: "A...more important reason the claim is not preempted is that although plaintiff's claim may refer to a CBA in some respects, it does not substantially depend upon interpretation of the CBA. Not every state law claim that relates in some way to a provision in a collective bargaining agreement is preempted."); Paradis v. United Tech.. (D.Conn. 1987), 672 F. Supp. 67,70-71-(state claims in the nature of fraud hinge not on what may be in a CBA but rather what was represented or not represented "irrespective" of the contents of any CBA.); Anderson v. Ford Motor Co. . (8th Cir. 1986), 803 F.2d 953, 957 (holding fraud " is a common law tort deeply rooted in local standards of individual and social responsibility..[and] does not derive or depend on an underlying contract.")

Regardless of the approach, the consensus among the circuits is that the conflicts are widespread and deep. Id. at 958-59 (noting conflict with Ninth Circuit); Hanks v. GMC (8th Cir 1990),

906 F.2d 341, 344, n.4 ("Ninth Circuit... unjustifiably extends (Supreme Court precedent)"); McCormick v. AT&T Tech.. (4th Cir. 1991), 934 F.2d 531 and 538-539 (Dissenting opinion); (in a 4-3 decision, Judge Phillips observes that his "disagreement with section 301 preemption analysis is fundamental. It is a disagreement that simply reflects a wider inter-circuit conflict on this issue that has developed in recent years as lower courts have sought to apply the Supreme Court precedents."): Paradis v. United Tech., supra at 69 (Noting that the current status of section 301 preemption "in its application by different courts, have led to different results in similar fact scenarios."); See also, id. at 71,n.7 (observing split on fraud among the circuits including Sixth).

Thus, the need for clarification is great. The issues are clear and divisions between the circuits are great. Moreover, the lower courts readily acknowledge they are at odds, sometimes in less that flattering terms. The instant case reflects the

divisions. Granting certiorari will resolve these divisions now and for the future.

II. SECOND QUESTION PRESENTED:

The United States Supreme Court has articulated the law in a variety of phrases in their analysis of Section 301 preemption cases. Some of the phrases favor a finding of preemption, such as; 'substantially dependent' and 'inextricably intertwined.' Other phrases are associated against a finding of preemption, such as ; 'tangentially related,' 'peripherally concerned' and 'parallel [state] rights'. To date, the Court has not specifically defined these terms and, unfortunately, the lower courts have failed to complete the process. Petitioners request certiorari so the Court may clarify the meaning of controlling terms used in Section 301 issues, by either identifying the process through which their meaning can be ascertained or by otherwise

clearly defining their meanings and appropriate uses.

Phrases such as "tangentially related", or "substantially dependent", are descriptive in nature. When viewed together within the cases the Court employed them, they define a process and not a dictionary definition. The lower courts have utterly failed to provide a workable definition. The inconsistency by which the lower courts apply these phrases makes it evident that they are not susceptible to a common understanding and usage. See, eg,. Anderson v. Ford Motor Co., supra at 958-59; Hanks v. G.M.C. supra at 344, n.4; McCormick v. A T & T Tech., supra at 538-39; Paradis v. United Tech., supra at 69 and 71 n.7. (note refers to conflict with Sixth Circuit over rationale in fraud and misrepresentation cases.)

The problem is partially a consequence of lower courts failing to consistently recognize that federal interests are often best served by

recognition of parallel and supplemental state causes of action. "Federal labor law in ...[a] sense is interstitial, supplementing state law where compatible, and supplanting it only when it prevents accomplishment of the purposes of the federal act... . Thus the Court has recognized that it cannot declare pre-empted all local regulation that touches or concerns in any way the complex interrelationships between employees, employers and unions; obviously much is left to the States." Metropolitan Life Ins. Co. v. Massachusetts (1985), 471 U.S. 724, 756-757. As a general rule, "courts sustain local regulation unless it conflicts with federal labor law or frustrates the federal scheme", Allis-Chalmers v. Lueck, (1985) 471 U.S. 202, 208-209, "by interfer[ing] with the effective administration of national labor policy." Farmers v. Carpenters, (1977), 430 U.S. 290, 298. See United States Constitution Amendment X.

The NLRA and LMRA seek to create equal bargaining power in the workplace. The purpose

is to provide a process by which a CBA can formulated and issues directly related to a CBA can be resolved. Certainly, there are provisions and sanctions for those who would act unfairly or unequal during this process. Beyond this, the law was not designed to address malicious, outrageous or egregious behavior generally associated with intentional torts. See Farmers v. Carpenters, supra. Generally, federal sanctions and damages would not be tailored to account for such extreme behavior. See e.g. Id.; Keehr v. Consolidated Freightways (7th Cir. 1987), 825 F.2d 133, 137-138; Krashna v. Oliver Reality, Inc (3d Cir. 1990), 895 F.2d 111, 115 ("state claim exceeds scope of...rights under LMRA.) Yonover, Preemption of State Tort Remedies for Wrongful Discharge in the Aftermath of Lingle v. Norge: Wholly Independent or Inextricably Intertwined, 34 So. D. L. Rev. 63, 78-79.

The procedural posture of this case underscores the importance of recognizing the state interest. One of the reasons for the states providing a

longer statute of limitations is the psychological fact that those so injured are unlikely to be readily capable of recognizing rights and damages in a short period of time. See, eg. Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised (DSM-III-R), American Psychiatric Association at 218-222 (Major Depressive Episode-lasts 6 months or longer), 247-251 (Post Traumatic Stress Disorder) and 251-253 (Generalized Anxiety Disorder). The six month statute of limitation retroactively imposed upon petitioners to defeat their Section 301 claims may have been appropriate for the limited federal purposes of enforcing the CBA. However, preemption of the state claims imposes an unrealistic burden on those petitioners with emotional injuries and ultimately forecloses recovery to a whole class of helpless plaintiffs. Moreover, if petitioners had managed to preserves federal claims, federal recovery could not address their injuries, See eg. Yanover, supra at 77-79. Such foreclosure borders on an arbitrary denial of fundamental

substantive principles embodied in Fifth Amendment Due Process. Bolling v. Sharp (1954), 347 U.S. 497, 499 (Federal government is limited by concepts similar to equal protection embodied in Fifth Amendment substantive due process.) See Scaccia, Title VII and Treaty Rights Battles; The Verdict is Still Out, X ASILS International Law Journal 77, 91-96.

It is apparent from the nature and context of petitioners' state claims (and the eight years in federal court), that any appellate decision purporting to resolve the controversy should have defined its use of controlling phrases. The lower court should have employed a methodology that addressed petitioners assertions that their claims involve parallel and supplemental state causes of action that only tangentially concern a collective bargaining agreement yet foster the advancement of deep local concerns. See Farmer v. Carpenters, supra at 300-301. Had proper methodology been used the Sixth circuit would have found none of the state actions preempted.

Petitioners will first discuss a proper methodology for analyzing section 301 claims which take into account both federal concerns and state interests. Petitioners then examine the general approach by the lower court. Petitioners analysis reveals that their claims should not have been preempted even assuming arguendo that there was some relation to the CBA. Petitioners' claims are only peripheral to federal interest and tangential to any collective bargaining agreement. Concepts of state parallelism are demonstrated as controlling since federal interests are best served by recognizing the state's substantial interest in providing petitioners' claims a forum.

The appropriate standard for judicial review requires a threshold inquiry of whether, under the circumstances alleged, the claim appears to be embraced within the federal legislation. If not, there is little or "no risk that permitting the state cause of action to proceed would result in regulation of conduct Congress intended to

protect." Farmer v. Carpenters, supra at 298. Where the threshold inquiry indicates possible federal preemption, further analysis is required to determine whether the federal purpose underlying the doctrine of preemption is best served by its application. Still, the first question remains as to what standard controls the threshold inquiry.

The threshold inquiry should focus on state black letter law and avoid embroiling (possibly for years) the federal courts in issues more appropriately left for subsequent phases of litigation. The state courts already have concurrent jurisdiction and are duty bound to apply federal common law where appropriate. State black letter law was the threshold inquiry in Lingle v. Norge Div. of Magic Chef, supra at 407-410. The state black-letter elements were: (1) discharge and (2) a state prohibited motive for discharge,. "Each of these purely factual questions pertains to the conduct of the employee and the conduct and motivation of the employer. Neither... element requires a court to interpret

any term of a collective bargaining agreement. Thus, the state law remedy.....is independent of the collective bargaining agreement in the sense ...that matters for section 301 pre-emption purposes: resolution of the state law claim does not require construing the collective bargaining agreement." Id at 407 (emphasis added). State black-letter law was also the threshold inquiry pre-empting a state claim in Allis-Chalmers v. Lueck, supra at 216-218 ("Under Wisconsin law, the tort intrinsically relates to the of the nature and existence of the [collective bargaining] contract."). Accord, Electrical Workers v. Hechler (1987), 481 U.S. 851, 858-862 ("Because the [tort] right asserted not only derives from the contract, but is defined by the contractual obligation of good faith, any attempt to assess liability ... inevitably will involve [collective bargaining] contract interpretation."). See also McCormick v. A T & T Tech., Inc., supra (dissenting opinion).

Petitioners submit that the state black letter law in their claims does not require examination of the CBA. This is more fully demonstrated in the three subsequent questions presented. To avoid redundancy they are incorporated by reference. Importantly, assuming arguendo the claims do not survive the threshold inquiry, further analysis reveals the claims still should not be preempted.

> " When it is clear or may fairly be assumed that activities which a state purports to regulate are protected...or [prohibited]..., due regard for federal enactment requires that state jurisdiction must yield....But the same considerations that underlie... [preemption] led the Court to recognize exceptions in appropriate classes of cases. [The Court] refused to apply the preemption doctrine...if that activity was merely a peripheral concern to the LMRA or touched interests so deeply rooted in local feelings and responsibility that, in the absence of compelling congressional direction we

could not infer that Congress had deprived the States of the power to act."

Farmer v Carpenters, supra at 296-297 (emphasis added). Though the Farmer case involved Garman preemption, Section 301 preemption analysis should not be significantly different in form; both focus on the collective bargaining process, only Section 301 emphasizes the CBA and grievance process whereas Garman emphasizes the preeminence of the NLRB. Thus, the second step of analysis is examination of countervailing considerations. At this phase section 301 preemption would "depend [or turn] upon the nature of the particular interest being asserted and the effect upon the administration of national labor policies of concurrent judicial and administrative remedies." Id. at 300-301 (emphasis added). In other words, the interest of the state/individual is balanced against the federal interest to determine whether the "state cause of action would interfere with effective

administration of [the appropriate] national labor policy." Id.

The national labor policy of Section 301 cases centers on uniformity in interpretation of collective bargaining agreements. The objective is to avoid labor disputes arising over uncertainty in the meaning of provisions during negotiations, and later administration, of a CBA. Allis-Chalmers v. Lueck, supra at 209-210; Teamsters v. Lucas Flour (1962), 369 U.S. 95, 103. Though effectiveness of arbitrations is also a Section 301 concern, Hanks v. G.M.C., supra at 344-345, it is not an issue in the instant case. Grievance procedures have long ago been ruled illusionary and not applicable to the dispute. Adkins v. GMC (SD Ohio 1983) 573 F. Supp 1188, 1196-97.

Analyzing the state and federal interest, with the facts of the case reveals that petitioners and respondents agree that the 1979 CBA was intended to abolish transfer rights known as a

"bridge agreement." Adkins, supra at 18. The bridge agreement simply is not in there. The nonexistence of a provision does not create a federal question on uniform interpretation of a term in a CBA. Wells, supra. The agreement is merely backdrop.

Petitioners state claims are based upon two categories of behaviors. The first involves oral statements and other actions beginning four months after ratification of the agreement. The second relates to oral and written statements and concealments and other actions prior to the vote ratifying the CBA. In both, the legal issue is what was said and done or what was not said or done, not the meaning of a 'bridge agreement' or what should be interpreted in the CBA. Since the CBA is not the issue and the dispute does not directly involve its interpretation, petitioner's claims only tangentially involve the CBA. Wells, supra F.2d at 172-175; accord, Caterpillar Inc. v. Williams, supra, (oral and written

written representations alleged occurred outside the agreement).

The only other "provision" identified by the lower court as reason for preempting petitioners claims was seniority. Again, petitioners are not per se asserting seniority rights under the CBA. Rather the claim is that statements were made that included the term "seniority." The issue is what was said and understood at the time, not what was in the CBA. Perhaps the lower court was indicating seniority under the CBA may also play a role in evidence. Maybe so, but the case still does not involve a substantial federal interest under the rationale of Lingle v. Norge Division of Magic Chef, supra.

The Lingle decision noted that the state issue was motive for discharge, essentially a factual inquiry. Id at 407. Obviously, at trial relevant evidence demonstrating proper or improper motive would include compliance or noncompliance with discharge procedures in the

CBA. Also, the CBA agreement would be important for assessing damages. Such indirect use of the CBA had no affect on the state claim.

> "although federal law would govern the interpretation of the agreement...the underlying state claim, not otherwise preempted, would stand. Thus as a general proposition,a state law claim may depend for its resolution upon both the interpretation of a collective bargaining agreement and a separate state law analysis that does not turn on the agreement. In such a case, federal law would govern the interpretation of the agreement, but the separate state law analysis would not be thereby pre-empted....not every dispute tangentially involving a provision of a collective bargaining agreement is preempted by [Section] 301."

Id at 413 n.12.

Without a more direct need to interpret the CBA, federal policy under Section 301 is not

implicated. Federal interest is best served by recognizing the state claim. Though some of the behavior alleged may also constitute an unfair labor practice, fraudulent and/or outrageous behavior far exceeds what is needed to satisfy a federal violation. See, eg.. Farmers v. Carpenter, supra. The limits of federal enforcement only encourage those who intend to act fraudulently, maliciously, or outrageously. Without the state claims, these federal limitations are counterproductive to the labor peace at the core of federal legislation. Similarly, labor unrest is encouraged by those frustrated with partial or inadequate justice. Petitioners suggest that this, at least partially, explains why factual parallelism, to support nonpreemption of state claims is approved in Lingle v. Norge Div. of Magic Chef, supra at 408-410.

The state also has a strong interest in allowing a forum for petitioners' claims. "Fraud is a common law action deeply rooted in local standards of individual and social

responsibility....A claim of fraud does not derive from nor depend upon an underlying contract." Wells supra F. Supp. at 107. States also have "an overriding interest in protecting its citizens from intentional infliction of emotional distress." Anderson v. United Auto Workers, supra at 443. Petitioners asserted mental anguish in their fraud and loss of consortium claims. Substantial burden is placed on state resources if those who cause such injuries can readily escape responsibility for maintenance or recover.

Petitioners' quasi-contract and promissory estoppel claims also advance federal interest. First, it is doubtful whether quasi-contract or promissory estoppel claims are cognizable under LMRA. See eg., Marine Transport Lines, Inc v. International Organization of Masters, (S.D.N.Y. 1986), 636 F. Supp. 384, 390-391; Caterpillar v. Williams, supra. Without the state claims, those who do not wish to abide by their representations and promises have nothing to fear regardless of the damage that results. Such

immunity hardly serves the national interest of preventing labor unrest.

The Sixth Circuit wholly ignores analysis of federal or state concerns. No mention was made of state parallelism or matters of peripheral concern to federal interest. Instead, the court held as policy: "The fact that these misrepresentations took place outside the context of collective bargaining is immaterial." Adkins supra at 17. This direct conflict with the Wells case, may have occurred from the court feeling a need to examine the CBA for provisions that might relate to a nonexistent bridge agreement. However, judicial inconvenience is not the focus for finding preemption (though it may support remanding). Thus, by improper methodology the lower court failed to identify the true issue, to wit, what was said or not said by defendants and their agents.

The Sixth Circuit also overruled the district court's finding that some of petitioners emotional

distress claims were not preempted. In doing so the court did not engage in a preemption analysis. Rather, the circuit court preempted based upon its feeling that petitioners' allegations of outrageous behavior were not factually sufficient. Thus, the court substituted a substantive Fed. R. Civ. Pro. 56(a) and (b), or Fed R. Civ. Pro. 12(b)(6) analysis, which was not at issue, for a pre-emption analysis. Had the lower court engaged in a preemption analysis it could have discovered all the alleged behavior was outside the LMRA and NLRA. The state action neither prohibited what is protected nor protected what is prohibited. The court would have discovered the intentional infliction of emotional distress claim was cognizable through concepts of state law parallelism. The error by the lower court is reflected in its failure understand that petitioners case is not based on the CBA.

III. THIRD QUESTION PRESENTED:

Petitioners fraud claims may not be preempted under Section 301 unless based "directly on rights created by [a] collective bargaining agreement ...[or] substantially dependent on analysis of a collective bargaining agreement." Caterpillar v. Williams, supra at 394-95. Petitioners state fraud claims do not seek to assert any right out of any CBA. The lower court did not identify how any specific element was substantially dependent on the CBA. The focus for the lower court was that petitioners claims "related" to a CBA. Id at 9.

The lower court was apparently concerned about potential use of various documents relating to the CBA to support,with other evidence, an element or a defense. Such concerns are misplaced. "[C]laims having their genesis in state law are not preempted merely because their resolution in part requires interpretation of a collective bargaining

agreement." Milne Employees' Assn. v. Sun Carriers Inc. (9th Cir Nov. 1991) 1991 U.S. App Lexis 27786 at P.8. Petitioners also find support in the Lingle case. In Lingle the issue of employer motivation was factually dependent, though, as a practical matter, compliance or noncompliance with discharge procedures in the CBA would be waived at the jury as evidence supporting a permissible or impermissible motive. Lingle v. Norge Division of Magic Chef, Inc., supra. The use of the CBA to determine damages was also approved. Id. at 413, n.12. In other words, it is "not required that the CBA be irrelevant to the dispute; either party may still use the CBA to support the credibility of its claims." Jones v. Roadway Express, Inc. (5th Cir. 1991), 931 F.2d 1086, 1090.

Like other states, Ohio's elements of fraud are: (a) misrepresentation or concealment of a material fact; (b)knowledge of falsity or concealment (or such great indifference that knowledge can be inferred) ; (c) intent to induce

reliance; (d) justifiable reliance and; (e) damages. Cohen v. Lampco, Inc. (1984), 10 Ohio St. 3d 167,169. Wells, supra at 172 n.10. Milne Employees' Assn v. Sun Carriers Inc., supra. By themselves, these elements do not refer to, nor require evidence from a contract such as a CBA. Similarly, petitioners' factual allegations do not give these elements a preemptive life.

The primary events supporting petitioners' fraud claims started four months after ratification of the 1979 CBA and extended for almost a year (February 1980 through January 1981). The general core of these events are set forth in paragraphs 39 through 42 of the complaint,i.e., oral misrepresentations of job security and future employment when there was none. These misrepresentations each have a basis independent of any CBA. First, based upon 817 individual experiences. Second, based upon the behavior of the defendants Third, no provisions in the collective bargaining agreement embrace the oral

misrepresentations. Thus interpretation is not required.

Turning to the elements, material misrepresentation, knowledge and intent do not require interpretation of any CBA, but turn on the individual plaintiff's state of mind and "purely factual questions pertaining to the conduct and motivation of the [defendant when they allegedly made the representations]". Lingle v. Norge Div. of Magic Chef, supra at 407. Similarly, the damage and justifiable reliance elements are purely a factual inquiry. See Wells supra. As the lower court recognized, the misrepresentations to the 817 plaintiffs over a one year period evolved into two forms. Adkins supra at 16-18. First, there was concealment of the absence of a bridge agreement in the CBA. As noted previously, the absence of a provision does not trigger a preemption. Petitioners' reliance is based not on the CBA but solely upon relationship of the parties, the manner of communication (and withholding) and, generally,

the factual circumstances of the interaction. The second group of misrepresentations indicated that employment security existed despite what was not in the CBA. Again, the "dispute is highly fact-bound one concerning what was said, or promised, at the meeting[s]. The defense to such a claim is not that the ...[CBA] might be construed to say otherwise; rather, it is the 'we made no such representation' or that 'no such representation could have been made given the ...[CBA's] provisions'." Wells supra F.2d at 173.

Petitioners also assert a second category of fraud claims occurring prior to ratification of the CBA and based on concealing and misrepresenting the absence of a bridge agreement in contract. Once again, the issues are not what is in the agreement. Its not there. Rather, the issues are what was said or not said. Petitioners recognize this may be a closer question if, for no other reason than factually there was a potential for an unfair labor practice claim. However, this potential is not

fatal. First, the state issues and sanctions for fraudulent conduct are different as the behavior is more extreme that what is needed to create an unfair labor practice. Thus, there is support for state law parallelism. Lingle v. Norge Div. of Magic Chef, supra at 408-409. Second, to the extent preliminary analysis indicates possible preemption, the balancing of various interests and purposes underlying federal preemption indicate preemption is not appropriate. To avoid redundancy, petitioners incorporate by reference relevant portions of the analysis in the Second Question for review.

Accordingly, the lower court's preemption of petitioners' claims was a departure from the guidelines established by the Court's in the Lingle and Caterpillar cases. So as to rectify the error and avoid a compounded problem in future cases, certiorari should be granted.

IV. FOURTH QUESTION FOR REVIEW

Petitioners do not seek enforcement of a CBA. Rather they seek recovery for what was said and what they were led to believe. "Their complaints relate not to the agreement itself but to entirely separate conduct by [respondents]." Wells, supra F. Supp. at 111.

The Court has specifically stated that " a plaintiff covered by a collective bargaining agreement is permitted to assert legal rights independent of that agreement, including state-law contract rights so long as the contract relied upon is not a collective bargaining agreement." Caterpillar v. Williams, supra at 396. The Court further indicated that a state based contract claim may be upheld even though it "tangentially involv[es] a provision of a collective bargaining agreement...[or] merely relat[es] to a contract within the coverage of [section] 301." Id. at 396-97, n.10.

In conflict with the Caterpillar, case the Sixth Circuit holds "employees covered by a CBA cannot rely upon the existence of a separate individual employment contract giving rise to state law claims." Fox v. Parker Hannifan Corp, supra at 801, Jones v. G.M.C., supra at 383. The lower court's legal and factual analysis of petitioners' contract claims is guided by this impermissible predisposition.

The elements of petitioners' state contract claims are offer, acceptance and consideration. Alternatively, a representation was made which they (individually) justifiably relied upon, to their (individual) detriment. None of the elements in either alternative look to the CBA. The basis of the claim is what was said, implied or promised by union leaders, their agents and the employer, in their discussions with petitioners (individually or in group). See, e.g. Wells, supra. Indeed, the CBA is silent as to any right to work at the new factories. Such silence removes the CBA from preemptive consideration. Id. The Sixth

Circuit failed to identify which element was substantially dependant upon or inextricably intertwined with, the CBA. Identifying the specific element would be impossible, petitioners' claims are based on oral representations outside the agreement. Instead, the lower court ruled the "critical inquiry is whether a court adjudicating must determine rights arising under a collective bargaining agreement." Adkins, supra at 17. The lower court identified these rights as seniority rights and bridge agreement rights.

As to the relevance of a bridge agreement, petitioners, individually and jointly, assert they were promised jobs that did not exist at two new factories. To the extent those promises referred to transfer rights known as a bridge agreement, such rights did not exist under the CBA. The absence of a provision in the CBA which is central to the dispute cannot create federal preemption. Wells, supra. Alternately, to the extent those promises related to the availability of

numerically sufficiently new positions at the new factories (that could be open to all union members) such an opportunity never occurred for petitioners. Again the issue is not the CBA, but the independent representations. Id.

As to the relevance of seniority, focusing on conversations paraphrased in the complaint using the phrase "seniority", the lower court characterized petitioners contract claims as based upon seniority provisions existing in the CBA. The lower court failed to appreciate that this complex class action is based on individual promises of jobs and individual belief that jobs were forthcoming. Under such circumstances the elements of reliance (for promissory estoppel) or acceptance (for implied contract) would not be satisfied at trial if solely based on the maybe and vague uncertainty of possible available seniority. Without this element there is no independent contract, the trial court would never even hypothetically get to the CBA. Accordingly, there could not possibly be a federal issue based

on the seniority provisions. Similarly, to the extent the respondents bantered about the term "seniority," the state claim would turn on whether the individual was left with the understanding that his job was secure or employment would otherwise be forthcoming. Again, there is no need to interpret the CBA as the understanding of the parties would control.

The lower court analyzed the seniority issue by analogy to the Caterpillar case. This analogy focused on how it anticipated the CBA could be used if the case went to trial. The impression created is that the court's analysis is merely speeding up what it anticipates is the inevitable preemption. Such analysis is shortsighted. First, to the extent that aspects of seniority provisions in the collective bargaining agreement may be used at trial to support a defense or bolster evidence of an element, "claims having their genesis in state law are not preempted merely because their resolution in part requires interpretation of a collective bargaining

agreement." Brown v. Holiday Station Stores, supra at 405. It is "not required that the CBA be irrelevant to the dispute; either party may still use the CBA to support the credibility of its claims." Jones v. Roadway Express, supra at 1090. Lingle v. Norge Div. of Magic Chef, supra at 413, n.12. Second, to the extent that initial analysis might indicate possible preemption, examination of the federal purposes reveals they are furthered more by resolution of the state claims on the merits. This examination is set forth with petitioners' Second Question Presented for Review and, to the extent applicable, incorporated herein by reference to avoid redundancy.

V. FIFTH QUESTION FOR REVIEW:

The NLRA and LMRA does not protect outrageous conduct. Farmer v. Carpenters, supra at 301-302. Regardless of the setting, federal preemption will not override a state emotional distress claim which has as an element a requirement of outrageous conduct. Id. at 304-306. The Court correctly did not establish a national definition for "outrageousness." The determination of what constitutes outrageousness was left to the states with the only provision that "[u]nion discrimination in employment opportunities cannot itself form the underlying outrageous conduct on which the state tort action is based...something more is required." Id. at 305 (emphasis added). The Court never said that discrimination could not be considered.

The tort of emotional distress has evolved to reflect life's realities without causing disaster to the legal system. Ohio is in the mainstream that recognize, while employment discrimination in a

vacuum may not amount to outrageousness, it is a factor for consideration and, depending on the factual circumstances, may constitute the determinative factor. Uebelacker v. Cincon Systems, Inc. (1988), 48 Ohio App. 3d 268; Henteel v. Singer Co. (1986), 138 Cal. App. 3d 290 (discrimination following OSHA complaint); Carsner v. Freightline Corp. (Or 1984), 688 P.2d 398; Cagle v. Burns (S. Ct. Wa. 1986), 726 P.2d 434 (wrongful discharge in violation of public policy); Beasley v. Affd Hospital Prod. (Mo.1986), 713 So.2d 557. The exercise of power and authority " must be done in a permissible way and extreme and outrageous conduct may arise from abuse by the actor of a position, or a relation with the other, which may give him actual or apparent authority over the other or power to affect his interests." Uebelacker, supra (quoting Restatement of the Law 2d, Torts (1965), Section 46). Simply, "relatively immobile workers who often have no other place to go to market their skills do not stand on equal footing with large corporations

[and unions]....It is the abuse of power ...which aggravates the outrageousness." Milton v. Ill. Bell Tel. Co. (Ill. App. 1981), 427 N.E.2d 829, 832. The behavior cannot be viewed in a vacuum rather the combination, duration, frequency individual susceptibility and employee's ability to obtain internal redress are significant factors in determining outrageousness. See,. Rulon-Miller v. IBM (Cal. App.1985), 208 Cal. Rptr. 524, 534-535.

The Sixth Circuit removed from petitioners' case, any consideration of discrimination as a factor in outrageousness. The court first segregated the various behaviors, isolating them out of their context. First, the district court segregated and preempted petitioners' claims relating to "defendants failure to consider [their] rights and [also withheld] relevant information about the collective bargaining agreement". Adkins, supra at 21-22. In affirming, the Sixth Circuit stated: "the: claim goes to the quality of their union representation and the fairness of their

employer's labor practices, issues central to the concerns of federal labor law." Id. at 25. There was no further analysis. Thereupon the circuit overruled the district court's finding of no preemption for the portions of the complaint relating to emotional distress caused by "defendants conduct in denying Plaintiff the right to participate." Id. at 22. The circuit court's rationale was the conduct was not sufficient to constitute outrageousness. Id. at 25-26.

Petitioners challenge the circuit court on three points: First, the determination of outrageousness should not be piecemeal. The respondents' entire course of conduct should be considered if relevant. Second, the court should not have automatically preempted portions of the claim which may have a relation to the labor process. Closer examination would reveal only a peripheral relation to federal policies. Also, a LMRA action technically would not be concerned with the scope of conduct beyond the minimum needed to satisfy a violation and would not tailor

damages to all injuries sustained. Accordingly, relevant portions of petitioners' second question for review are incorporated by reference. Third, the circuit court should not have overruled the trial court and determined whether the conduct alleged in the complaint constituted outrageousness. Aside from its failure to analyze current state law, preemption was the issue before the court, not the underlying merits.

CONCLUSION:

For the foregoing reasons petitioners assert the Petition for Certiorari should be granted.

Respectfully Submitted,

Dwight D. Brannon
Counsel of Record
for Petitioners-Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Petition for Certiorari has been served upon each of the following counsel for the respective respondents, GMC, IUE, and Local 801, by regular United States Mail this 13 day of January 1992 addressed to their respective following office addresses:

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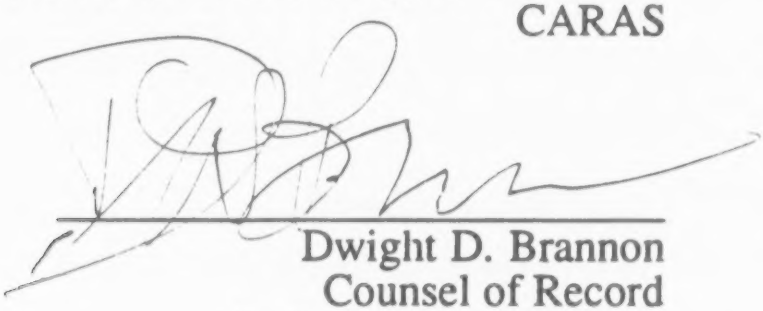

Dwight D. Brannon
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for Plaintiffs-Petitioners

APPENDICES

APPENDIX A

RECOMMENDED FOR FULL TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 24

Nos. 90-3164/3234/3235

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN J. ADKINS, et al.,
Plaintiffs-Appellants (90-3164)/
Cross-Appellees,

v.

GENERAL MOTORS CORPORATION,
Defendant-Appellee/
Cross-Appellant (90-3234),

and

LOCAL 801; INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED, MACHINE and FURNITURE WORKERS, AFL-CIO,
Defendants-Appellees/
Cross-Appellants (90-3235).

ON APPEAL from the United States District Court for the Southern District of Ohio

Decided and Filed October 15, 1991

Before: MILBURN and BOGGS, Circuit Judges; and

DEMASCIO,* Senior District Judge.

BOGGS, Circuit Judge. Plaintiffs are a class of former employees of defendant General Motors Corporation (General Motors) and their spouses. Because the spouses' claims are derived from the employees' claims, we shall use the term "plaintiffs" to refer to the employees only, unless the facts and the law of this case require us to distinguish between the plaintiffs-employees and the plaintiffs-spouses.

At all times relevant to this dispute, the plaintiffs were members of defendant International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers and of defendant Local 801 of that union (collectively, "the union"). In a prior action in the United States District Court for the Southern District of Ohio, plaintiffs brought a hybrid unfair representation/unfair labor practices claim against General Motors and the union, pursuant to the Labor Management Relations Act (LMRA) § 301, 29 U.S.C. § 185, and the Labor- Management Reporting and Disclosure Act (LMRDA) § 101(a)(1), 29 U.S.C. § 411(a)(1). *See generally Adkins v. General Motors Corp.*, 556 F. Supp. 452 (S.D. Ohio 1983)(motion to dismiss); *Adkins v. General Motors Corp.*, 573 F. Supp. 1188 (S.D. Ohio 1983) (motion for summary judgment), *aff'd in part, remanded in part*, 769 F.2d 330 (6th Cir. 1985). In that case, plaintiffs alleged, in substance, that General Motors and the Union had colluded in negotiating a collective-bargaining agreement in order to abrogate the special seniority rights contained in a collective-bargaining agreement called the "bridge agreement." We will discuss the nature of this agreement and the plaintiffs' rights under it more fully later in this opinion.

In the same action, plaintiffs also pursued pendent state law claims for breach of contract, tortious interference

*The Honorable Robert E. DeMascio, Senior United States District Judge for the Eastern District of Michigan, sitting by designation.

with contract rights, intentional infliction of emotional distress, and loss of consortium. The federal labor law claim was dismissed with prejudice as untimely. The pendent state law claims were dismissed without prejudice, for lack of a substantial federal question to support the exercise of jurisdiction over state law claims.

After the dismissal, many of the same plaintiffs filed a complaint in state court alleging fraud, tortious interference with contract rights, and intentional infliction of emotional distress, thereby initiating the case now before this court on appeal. *See generally Adkins v. General Motors Corp.*, 578 F. Supp. 315 (S.D. Ohio 1984). The factual allegations of the complaint were substantially the same as those advanced in the federal suit. Defendants removed the case to federal district court, asserting that these claims were fully preempted by federal labor law. Plaintiffs then moved to remand the case. The court below ruled that since plaintiffs' fraud and misrepresentations claims were fully preempted by federal labor law, the case contained a federal question substantial enough to support the exercise of federal question jurisdiction. At the same time, the district court also gave the defendants twenty days to present proper motions for summary judgment on all claims. The court noted its previous disposition of plaintiffs' federal labor law claims, which it had dismissed as untimely, and the identity of the complaint filed in the previous action and this one.

After defendants moved for summary judgment pursuant to the suggestion of the district court, the court below held that the federally-preempted fraud and tortious interference claims were barred by the six-month statute of limitations of the National Labor Relations Act. *See* 29 U.S.C. § 160(b). *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 171-72, 103 S. Ct. 2281, 2294 (1983). These claims were dismissed with prejudice.

With respect to plaintiffs' claims for emotional distress, the court ruled that some were preempted and others were

not preempted. Those preempted were dismissed with prejudice as time-barred. Those not preempted were remanded to state court, because the dismissal of the federally preempted claims had left the case without a substantial federal question. *See United Mine Workers of America v. Gibbs*, 383 U.S. 715, 86 S. Ct. 1130 (1966).

This timely appeal and cross-appeal follow the court's dismissal and remand. On appeal, plaintiffs contend that the district court erred in holding any of the claims preempted and in remanding the unpreempted emotional distress claim. On cross-appeal, defendants argue that the court erred in holding that some of plaintiffs' emotional distress claims were not preeempted and in failing to dismiss all these claims with prejudice as time-barred under federal labor law.

We affirm the district court's judgment in so far as it holds plaintiffs' claims completely preempted and therewith barred as untimely by applicable federal labor law. We vacate the judgment below in so far as it holds that plaintiffs' emotional distress claims are not completely preempted and remands them to state court. We remand the case to the district court with instructions to dismiss all of plaintiffs' emotional distress claims with prejudice as completely preempted and time-barred under federal labor law.

I

Before the events giving rise to this case occurred, plaintiffs were employed by the Frigidaire Division of General Motors at its Dayton-area plant. They were paid at the wage rates prevailing in the automotive industry instead of the lower wages of the appliance industry. General Motors wanted to pay its Frigidaire employees at the lower rates and, to this end, it negotiated a new agreement with the local in 1976. As the *quid* for this *quo*, General Motors agreed that Frigidaire workers could transfer to the nearby Delco plant, also owned by General Motors and organized by the local, where automotive

workers' rates prevailed. The agreement granting the plaintiffs these rights, called the "bridge agreement" by the parties, provided that if there were lay-offs at Delco, Frigidaire workers who had transferred there could return to Frigidaire, where they would replace workers with less seniority. Plaintiffs took advantage of the "bridge agreement" and transferred from the Frigidaire plant to the Delco plant. The Delco plant later became a part of the Harrison Radiator Division of General Motors, but for purposes of simplicity we shall continue to refer to it as the Delco plant.

In 1979, General Motors sold its Frigidaire Division to White Motors, but retained possession of the physical plant at Dayton. General Motors planned to convert the facility and use it as part of its Chevrolet Division. All the workers were laid off as a result. The local then entered into negotiations with General Motors in order to secure employment for its laid-off members when the plant re-opened and to maintain its own position as their bargaining agent. General Motors agreed to rehire its laid-off employees and to recognize the union, but in the ensuing collective-bargaining agreement, the "bridge agreement" was abrogated. The resulting agreement was ratified by workers from the former Frigidaire plant and by the former Frigidaire workers who had transferred to Delco. The latter group included the plaintiffs. At the time of ratification, workers at the Delco plant were experiencing full employment, while workers at the Frigidaire plant were being laid off. As the year progressed, however, the situation was reversed. Workers at the Delco plant were laid off, including the plaintiffs. When they tried to retreat to the former Frigidaire plant, now part of Chevrolet, they learned that the "bridge agreement" had been abrogated.

The substance of plaintiffs' grievance, both in the preceding case and in this one, is that they were not told that the new collective-bargaining agreement terminated their retreat rights and that the union president told them many times prior to ratification of the new collective

bargaining agreement and afterwards that their "bridge agreement" rights would not be affected by the new arrangement. Plaintiffs argue that these representations were fraudulent and wrongly induced them to ratify an agreement not in their interest. Plaintiffs assert that the motivation for this alleged fraud was collusion between the local and General Motors, whereby the union agreed to the termination of plaintiffs' rights in exchange for General Motors's recognition of the local as the representative of the workers at the new Chevrolet plant. According to plaintiffs, this collusion constitutes common law fraud under state law. Plaintiffs also argue that the local president's post-ratification assurances about the survival of their rights have created a contract, which defendants have violated by refusing to honor their "bridge agreement" rights. Finally, the plaintiffs take the position that by their conduct in negotiating and implementing the new collective-bargaining agreement, defendants negligently[1] or intentionally inflicted severe emotional distress on them and their spouses.

II

The district court's well-reasoned opinion in response to plaintiffs' motion to remand and defendants' motion for summary judgment began by considering when claims apparently arising under state law are preempted by federal labor law. In the last decade, the Supreme Court has handed down four significant opinions on that question: 1) *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 105 S. Ct. 1904 (1985); 2) *International Brotherhood of Electrical Workers, A.F.L.-C.I.O. v.*

[1]The wrongdoing that plaintiffs ascribe to defendants is all intentional: *intentionally* misrepresenting the 1979 CBA; tortiously, *i.e.*, *intentionally*, interfering with contract rights; and acting outrageously, *i.e.*, *intentionally*, to cause them emotional distress. None of the cases cited in their brief refers to the negligent infliction of emotional distress. We have no choice but to treat plaintiffs' claims for the negligent infliction of emotional distress as pleading boilerplate, since plaintiffs do not specify the nature of the negligence, as opposed to the intentional conduct, on the part of the defendants that caused the plaintiffs emotional distress.

Hechler, 481 U.S. 851, 107 S. Ct. 2161 (1987); 3) *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 107 S. Ct. 2425 (1987); and, 4) *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 108 S. Ct. 1877 (1988). After reviewing these cases, the district court held that a claim made by the plaintiffs under state law would be fully preempted by federal labor law if it arose from or required the interpretation of any of the collective-bargaining agreements relevant to the case. *See Lingle*, 486 U.S. at 405-06, 107 S. Ct. at 1881 ("Thus *Lueck* faithfully applied the principle of [LMRA] § 301 preemption . . . : if the resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement, the application of state law (which might lead to inconsistent results since there could be as many state-law principles as there are States) is pre-empted and federal labor-law principles--necessarily uniform throughout the nation--must be employed to resolve the dispute."); *Williams*, 482 U.S. at 395, 107 S. Ct. at 2431 ("[For preemption purposes, s]ection 301 governs claims founded directly on rights created by collective-bargaining agreements, and also claims 'substantially dependent on analysis of a collective-bargaining agreement.' *Electrical Workers v. Hechler*, 481 U.S. at 859 n.3, 107 S. Ct. at 2166-67 n.3 ....").

After reviewing plaintiffs' allegations of fraud under this standard, the district court concluded that "virtually every fraudulent representation allegedly made by [d]efendants relates in one way or another to the terms of the various collective-bargaining agreements." For that reason, the court held that plaintiffs' claim for fraud under state law was "substantially dependent" on the terms of the collective-bargaining agreement and therewith preempted by federal labor law.

To reach this conclusion, the court below was obliged to sift through the complaint in order to detect the factual allegations underlying its claim for relief from fraud. This was not easy work. The complaint is very difficult to understand. It is prolix and vague. Because of this

problem, we find it necessary to quote more extensively from the plaintiffs' pleadings and the opinion of the court below than we normally do.[2] The following passage from the court's opinion exemplifies the approach the court took to the task of defining plaintiffs' claims.

> [In their motion in opposition to summary judgment,] "Plaintiffs claim that the Unions misrepresented GM's position in 1979 contract negotiations and thereby induced them to enter into the agreements." . . . Plaintiffs specifically assert that "GM, IUE and 801 concerted[,] presented, urged and proposed . . . [the] agreements and modifications [of February 23, 1979] in a manner designed to insure their adoption through the permitted withholding of information necessary to meaningfully inform [the plaintiffs] that their 'bridge agreement' rights would be impaired by an affirmative ratification." Plaintiffs further allege that "[i]n furtherance of . . . [the] concerted plan

---

[2]In their brief and at oral argument, the plaintiffs allude to additional conduct by the president of Local 801 and other parties to this case, not mentioned in their complaint, which they maintain would support their claims of fraud and contractual obligations arising outside the context of collective bargaining agreement. They argue that the court erred in preventing them from proving this additional conduct by granting summary judgment in favor of the defendants. Even if we were inclined to indulge this argument because of the mandate of the Federal Rules that a complaint is to be construed liberally, *see* FED. R. CIV. P. 1, our forbearance would not aid the plaintiffs. The court below disposed of the case on a motion for summary judgment. In opposing such a motion, plaintiffs were under a duty not only to state the allegation they intended to prove at trial but also to demonstrate the nature and quality of the evidence they had at their disposal. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552 (1986) ("[T]he plain language of Rule 56(c) [of the Federal Rules of Civil Procedure] mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 2514 (1986) ("The movant has the burden of showing that there is no genuine issue of fact, but the plaintiff is not thereby relieved of his own burden of producing in turn evidence that would support a jury verdict.").

> of GM, IUE and 801 to . . . substantially confine any consideration of . . . [the] modifications, GM, IUE and 801 concertedly confined the scope of any circulated information regarding the proposals to the explanation and discussion of only the benefits to be derived by the persons then employed by Frigidaire[,] while wholly ignoring and being totally silent with respect to any consequent converse detriment whatsoever to [the plaintiffs]." . . . *While not* every *claim of fraudulent misrepresentation would be preempted by § 301, based on the foregoing allegations, the Court concludes that the* Plaintiffs' *claims of fraudulent misrepresentation* are *in fact preempted by § 301.*
>
> *It cannot be disputed that Plaintiffs' claims of fraudulent misrepresentation all relate to the various collective bargaining agreements. It would be impossible to determine whether the information provided to Plaintiffs by Defendants was false (or insufficient) without analyzing the terms of the various collective bargaining agreements.*

J.A. 116-17. (Italics supplied.) (Citations omitted.)

In considering plaintiffs' tortious interference claim, the court also held that they were fully preempted, because adjudicating any of them would require an analysis of plaintiffs' rights under the collective-bargaining agreements. The following excerpts from the district court's opinion exemplify the approach the court took to these claims and their supporting allegations of fact.

> In Count Three of their Complaint, Plaintiffs assert that "[a]s a proximate result of the conduct of the defendant IUE, the defendant Local 801 breached its duties and agreements with the plaintiffs." Plaintiffs further assert that "[a]s a proximate result of the conduct of the defendant unions, the defendant General Motors did breach

its expressed and implied agreements with the plaintiffs." Finally, Plaintiffs assert that "[a]s a proximate result of the conduct of the defendant General Motors, the defendant unions did breach their contracts, fiduciary duties and business relationships with said plaintiffs." . . .

* * *

Defendant Local [801] allegedly breached its fiduciary relationship by promoting changes in Plaintiffs' collective bargaining agreement which were allegedly detrimental to Plaintiffs and by allegedly concealing the fact that said changes were in fact detrimental. *An analysis of whether or not Defendant Local 801 breached its duty of fair representation requires an analysis of the terms of the collective bargaining agreements. Without such an analysis, it would be impossible to determine the impact of the Defendant Local 801's actions upon the Plaintiffs.*

* * *

Further, [with respect to the contention that the local and the union induced General Motors to breach its duties toward the plaintiffs,] it must be remembered that Plaintiffs' chief complaint is that GM modified the terms of the collective bargaining agreements. Even assuming, *arguendo*, that some implied agreement, separate and apart from the collective bargaining agreements, existed between Plaintiffs and Defendant GM, *it would be impossible to determine whether said agreement was breached by the modification of the terms of the collective bargaining agreements without analyzing and interpreting the terms of the collective bargaining agreements.*

* * *

> Finally, [with respect to plaintiffs' claim that GM induced the local and the union to breach its duties toward the plaintiffs,] Plaintiffs basically assert that the Defendant Unions' actions in promoting the modification of the collective bargaining agreements breached Defendant Unions' duty of fair representation. *The propriety of Defendants' actions simply cannot be determined in the absence of an analysis of the terms of the collective bargaining agreements before and after the modification of February 23, 1979.*

J.A. 118-22. (Emphasis supplied.) (Citations omitted.)

III

A

Plaintiffs rely largely on *Caterpillar, Inc. v. Williams*, *supra*, to argue against the district court's disposition of their fraud and tortious interference claims. Because of the use plaintiffs make of the case, we begin our consideration of plaintiffs' arguments with a review of its facts and holdings.

In *Caterpillar*, plaintiffs were a group of long-time employees of the Caterpillar Corporation at its San Leandro, California plant. They hired in as hourly workers under terms established by a collective-bargaining agreement with United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Later during their employment with Caterpillar, they were promoted to the salaried ranks. While in those jobs, plaintiffs were told that the company would always take care of them and that if the San Leandro plant ever closed, plaintiffs would be given jobs in other divisions or subsidiaries of Caterpillar's enterprises. Later still in their employment at San Leandro, plaintiffs were returned to their former positions as hourly employees. While they were in those positions, the company decided to close the San Leandro plant. Plaintiffs were notified that they were

laid off and that promises to find employment for them elsewhere would not be honored.

Plaintiffs then brought suit in state court, alleging that Caterpillar's promises of continuing employment were contractual obligations under state law and independent of any collective-bargaining agreement between the UAW and Caterpillar. Caterpillar removed the action to federal court, contending that, as a matter of law, any rights plaintiffs might have because of contracts under state law were merged into the collective-bargaining agreement. Because of this merger, Caterpillar alleged, plaintiffs' state law claims were fully preempted by federal labor law.

The Supreme Court disagreed and held that removal was improper under the "well-pleaded complaint rule" of federal question jurisdiction. 482 U.S. at 391-93, 398-99, 107 S. Ct. at 2429-30, 2432-33. This rule provides that "federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." 482 U.S. at 392, 107 S. Ct. at 2429. In addition, the rule provides that "a case may not be removed to federal court on the basis of a federal defense . . . , even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue. 482 U.S. at 393, 107 S. Ct. at 2430.

Normally, federal preemption is a defense to a state law claim and may not serve as the basis for removal. 482 U.S. at 392, 107 S. Ct. at 2430. The doctrine of "complete preemption," however, is a corollary to the "well-pleaded complaint rule." 482 U.S. at 393, 107 S. Ct. at 2430. Once an area of state law has been completely preempted, any claim purportedly based on the preempted state law is considered a federal claim from its inception. *Ibid.* Complete preemption occurs when "the pre-emptive force of a statute is so 'extraordinary' that it 'converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-

pleaded complaint rule.'" *Ibid.* (*quoting Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 65, 107 S. Ct. 1542, 1547 (1987)). The complete preemption corollary to the well-pleaded complaint rule is applied primarily in cases raising claims preempted by LMRA § 301. *Ibid.* The preemptive force of § 301 is so powerful as to displace entirely any state cause of action for violations of contracts between an employer and a labor organization. 482 U.S. at 394, 107 S. Ct. at 2430 (citing *Franchise Tax Board of California v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 23, 103 S. Ct. 2841, 2853-54 (1983)). Section 301 preemption governs claims either founded directly on rights created by collective-bargaining agreements or "substantially dependent on analysis of a collective-bargaining agreement." 482 U.S. at 394, 107 S. Ct. at 2431 (citing *Electrical Workers v. Heckler*, *supra*).

Despite the strength of § 301 preemption, the *Caterpillar* court held that plaintiffs' state law contract claims were not completely preempted so as to justify removal to federal district court. *Ibid.* The court reasoned that Caterpillar's promises to the plaintiffs, if proven, constituted an employment contract with the plaintiffs individually, separate from the collective-bargaining agreement, that was not necessarily superseded by the collective-bargaining agreement between Caterpillar and the UAW. 482 U.S. at 396, 107 S. Ct. at 2431. In other words, "[the *Caterpillar* plaintiffs'] complaint is not substantially dependent upon interpretation of the collective-bargaining agreement. It does not rely upon the collective agreement indirectly, nor does it address the relationship between the individual contracts and the collective agreement." 482 U.S. at 395, 107 S. Ct. at 2431.

This holding did not preclude the possibility that the *Caterpillar* plaintiffs' claims were *partially* preempted. In other words, the defendant employer might successfully raise federal preemption as a defense to the plaintiffs' state law contract claim if it is able to show that enforcing

the alleged contracts would violate federal labor laws. *See* 482 U.S. at 397, 107 S. Ct. at 2432. For example, Caterpillar might successfully defend by showing that the purported contracts with the individual plaintiffs violated the principle of exclusive representation of the National Labor Relations Act § 9(a), 29 U.S.C. § 159(a). *Ibid.* Nonetheless, "the presence of a federal question, even a § 301 question, in a defensive argument does not overcome the paramount policies embodied in the well-pleaded complaint rule . . . . [A] defendant cannot, merely by injecting a federal question into an action that asserts what is plainly a state-law claim, transform the action into one arising under federal law . . . ." 482 U.S. at 396, 107 S. Ct. at 2433.

On the strength of *Caterpillar*, plaintiffs in this case argue that the district court erred by giving full preemptive effect to defendants' "defensive allegations" when it considered plaintiffs' claims of fraud. With respect to their claims of tortious interference, plaintiffs argue that the district court erred by not holding that their contract claims arose outside the context of the collective bargaining agreement. Neither argument has merit.

B

Plaintiffs misconstrue the district court's opinion when they argue that the court mistakenly treated defendants' assertion of federal preemption as an affirmative defense to fraud. Rather, the district court relied solely on the allegations on the face of the complaint to determine that all of plaintiffs' claims of fraud were fully preempted. An examination of the passages from the district court's opinion quoted above should make that point clear. The plaintiffs' claim, as the court understood it, was that the president of Local 801 had fraudulently induced them to ratify the 1979 collective-bargaining agreement that abrogated the "bridge agreement." As the court below correctly noted, under Ohio law, damages are a necessary element of a claim for fraud. *Cohen v. Lamko, Inc.*, 10 Ohio St. 3d 167,169, 462 N.E.2d 407, 409 (1984). The

damage alleged by plaintiffs was the loss of "bridge agreement" entitlements, which had been effected by the 1979 collective-bargaining agreement. In order to adjudicate this claim, the court below would have been obliged, at a minimum, to determine that the "bridge agreement" conferred such rights on the plaintiffs, that the subsequent collective-bargaining agreement abrogated those rights, and that the plaintiffs agreed to the 1979 collective-bargaining agreement because the president of Local 801 misrepresented those rights as the court construed them. As the court below correctly concluded, such a judicial undertaking would necessarily involve the federal courts in adjudicating a claim "substantially dependent on analysis of collective-bargaining agreements." *Caterpillar*, 482 U.S. at 394, 107 S. Ct. at 2431; *Electrical Workers*, 481 U.S. at 859 n.3, 107 S. Ct. at 2166-67 n.3. We might go even farther and say that the rights at issue are "created by collective-bargaining agreements," *Caterpillar, ibid.*, thus effecting a complete preemption of plaintiffs' fraud claims.

Plaintiffs also argue that the court did not consider all of their allegations of fraud in concluding that their claim was fully preempted. Their brief states:

> As set forth in paragraphs 39 through 42 [of the complaint], the Plaintiffs-Appellants further alleged, after completion of all collective bargaining agreements, and after all the actions surrounding the collective bargaining agreements, that the President of Local 801 from February of 1980 through January of 1981, made various extensive fraudulent misrepresentations regarding the continued recognition of the seniority rights of the laid off Plaintiffs-Appellants. Specifically he indicated that these employees had nothing to worry about, and they accordingly would participate fully in the Chevrolet jobs. . . .
>
> These fraudulent representations made by the President obviously took place long after the

> collective bargaining agreements, and they were not representations being made with regards to the collective bargaining agreements, but were representations that the Plaintiffs-Appellants would be participating in the Chevrolet jobs like their counterparts.
>
> * * *
>
> In the case at bar, the fraudulent representation claims are based upon the representations made by the President; the claim does not require extensive interpretation of the collective bargaining agreement. Instead, the Plaintiffs-Appellants, in raising their separate state claims, complain with regards to the fraudulent acts on the part of the President in making representations that seniority, despite the terms and conditions of the collective bargaining agreement, was going to be respected.

Brief for the Appellants at 20-21, 22-23.

Plaintiffs' position in the passages just quoted from their brief is not very clear. We do not know whether they are alleging that the president of Local 801 told them that the 1979 collective-bargaining agreement did not affect their rights under the "bridge agreement," or whether they are alleging that the president of Local 801 told them that their purported entitlement to jobs at the Chevrolet plant would be respected, despite the 1979 collective-bargaining agreement. What is clear is that plaintiffs maintain that these representations occurred independently of the collective bargaining agreement and that, as a result, they give rise to claims not completely preempted by federal law.

Under either understanding of the meaning of plaintiffs' complaint, this argument is without merit. We assume first, for the sake of argument, that plaintiffs are asserting that after the 1979 collective-bargaining agreement had been negotiated and ratified, the president of Local 801

concealed from the plaintiffs that it abrogated their "bridge agreement" rights. The fact that these alleged misrepresentations took place outside the context of collective bargaining is immaterial. The critical inquiry is whether a court adjudicating this claim must determine rights arising under a collective bargaining agreement. It surely must, if plaintiffs are alleging that the president of Local 801 concealed from them the fact of their loss of "bridge agreement" rights.

In order to find fraud under Ohio law, a court must find, among other things, that there is a misrepresentation or concealment of fact material to the transaction, that the party against whom fraud is alleged knew of the falsity of his misrepresentation or was so indifferent to truth or falsity that knowledge may be inferred, and that the misrepresentations were made with the intent of inducing the other party to rely on it to his detriment. *Cohen*, *supra*. In order to make such a determination in this case, the court would have to ascertain what the plaintiffs' rights were under the bridge agreement; whether they had been abrogated under the 1979 collective-bargaining agreement; what the Local's president had told plaintiffs about the 1979 collective-bargaining agreement; whether or not it was false, given the court's construction of the agreements at issue; and whether the Local president knew or should have known of its falsity. These determinations require an analysis of both the "bridge agreement" and the 1979 collective-bargaining agreement. The analysis may not be especially difficult, but it would be extensive. Plaintiffs' fraud claims, on this understanding of their complaint, are so intertwined with the terms of the collective-bargaining agreements present in the case that they may not be separated. *See Allis-Chalmers Corp.*, 471 U.S. at 213, 105 S. Ct. at 1912.

We next assume that plaintiffs are instead alleging that the president of Local 801 told them that their "seniority rights" would be respected, despite the terms of the 1979 collective-bargaining agreement abrogating their "bridge agreement" rights. We can conceive of no understanding

of the term "seniority rights" in this case other than the plaintiffs' asserted rights to transfer from the Delco plant to the Chevrolet plant (formerly the Frigidaire plant), carrying their job seniority with them. As we understand the facts of this case, this portable seniority is the basis of plaintiffs' asserted entitlement to share in jobs at the Chevrolet plant. These rights were created by the "bridge agreement," one of the collective-bargaining agreements of this case. Under the construction of plaintiffs' allegations that we are considering here, adjudication of plaintiffs' claim would require, at the minimum, a determination of what plaintiffs' "bridge agreement" rights were and whether they are being violated by the new arrangements. Again, the analysis may not be difficult, but it is extensive.

We conclude that the district court did not err in holding all of plaintiffs' fraud claims completely preempted by federal labor law. We find such a result completely consistent with federal labor law policy. Indeed, it is required by it. The parties do not dispute that both Local 801 and General Motors intended that the 1979 collective-bargaining agreement terminate the "bridge agreement." Plaintiffs, in effect, are asking this court to find that the rights thus terminated were reborn under state law because of the inequitable conduct of General Motors and union officials when the 1979 collective bargaining agreement was submitted for member ratification and at various times thereafter. We are asked to enforce those rights either by awarding money judgments for their violation or by injunction. We would thereby create a situation in which rights extinguished under federal labor law were vital under state law. The purpose of the doctrine of complete preemption is to prevent one set of rights and obligations from issuing from a collective-bargaining agreement under federal law while contradictory rights and obligations flowed from state law. If plaintiffs have been betrayed by their employer and their union and cheated out of valuable seniority rights in a fraudulent ratification procedure, their remedy is a timely suit for unfair representation/unfair

labor practices. Plaintiffs cannot be permitted to revive rights deemed extinguished under federal labor law by relying on state common law.

C

We now turn to plaintiffs' tortious interference claims. Plaintiffs rely on *Caterpillar* to argue that contractual obligations between employer, employee, and union may exist outside the collective-bargaining agreement. They fault the district court for failing to consider this possibility in addressing their tortious interference claims. As we understand the plaintiffs' position, they are arguing that a contract was formed because of the representation of the president of Local 801 and others that their "bridge agreement" rights either had not been abrogated, or would be respected, despite abrogation. They analogize this purported contract to the promises made to the *Caterpillar* plaintiffs about continuing employment with the company. On the basis of this analogy, they assert that the contractual rights arising from the representations of the local president and others can be determined without reference to the collective-bargaining agreements present in the case. Hence they maintain that removal on the basis of complete preemption was improper.

We do not accept this analogy. In *Caterpillar*, the alleged contract between the plaintiffs and the employees was independent of any collective-bargaining agreement; in this case, the purported contracts between the plaintiffs, on the one hand, and their union and their employer, on the other, are not independent in any way of the collective-bargaining agreements in the case. A comparison between *Caterpillar* and this case should make the point clear.

In order to adjudicate the *Caterpillar* plaintiffs' state law contract claim, a court would be obliged to engage in ordinary contract analysis. It would be required to determine questions such as whether Caterpillar had offered the plaintiffs continuing employment, whether the

plaintiffs had accepted the offer by performance or otherwise, and whether there was adequate consideration for the promises. Although these determinations could be made without any reference whatsoever to a collective-bargaining agreement, once it had been established that such a state law contract existed, the defendant company would be permitted to argue, for example, that subsequent collective-bargaining agreements had displaced this contract because of the exclusive representation provisions of the National Labor Relations Act. Such an argument would raise preemption as a defense to the assertion of contractual obligations that had been established without reference to a collective-bargaining agreement, but it would not serve as the basis of removal.

In this case, in order to adjudicate plaintiffs' claim that a contract existed under state law, the court would have to determine that plaintiffs were offered "seniority rights" based on the "bridge agreement" after the 1979 collective-bargaining agreement, that they accepted the offer, that there was consideration, and so on. Or the court may have had to determine that plaintiffs were induced to believe that their asserted "seniority rights" under the "bridge agreement" were intact or would be respected, even if not intact, and that they relied on these representation justifiably and to their detriment. An exercise such as this necessarily involves the court in determining what the "seniority rights" under the "bridge agreement" are. It follows that adjudicating the plaintiffs' tortious interference clam necessarily involves an analysis of a collective-bargaining agreement because the contractual relation necessary to the claim is based on the representations of the president of local 801 that their "seniority rights" would continue. For this reason, plaintiffs' tortious interference claims are fully preempted. The court below did not err in so holding.

IV

We now reach plaintiffs' emotional distress claims. The district court held some of these claims completely preempted, others not completely preempted. In the opinion of the district court, plaintiffs' claims were completely preempted if they were alleging that General Motors and the union caused them emotional distress by the very fact of actions such as withholding information about the 1979 collective-bargaining agreement; by concealing the fact that a vote was to be held; by insisting on quick ratification of the agreement; or by failing to consider their "bridge agreement" rights. On the other hand, the court concluded that plaintiffs' emotional distress claims were not preempted in so far as they were based on the defendants' conduct in doing these things.

Ohio law requires that a defendant's conduct be "extreme and outrageous" if there is to be tort liability for a plaintiff's emotional distress. *Yeager v. Local Union 20*, 6 Ohio St. 3d 369, 382, 453 N.E.2d 666, 671 (1983). The following passages from the district court's opinion exemplify its approach to the claims of emotional distress under Ohio law in this case.

> In ¶ 25 of their Complaint, Plaintiffs assert that Defendant GM, Defendant IUE and Defendant Local 801 "proposed modifications of the Local Seniority Agreement of Dec. 10, 1976 and of the Bridge Agreement of December 10, 1976, together with the urging that the same be adopted." *If the Plaintiffs are claiming that in proposing this modification, Defendants caused Plaintiffs' emotional distress, the Court concludes that said claim is preempted by § 301 of the LMRA. Such a claim is "inextricably intertwined with consideration of the terms of the [various] labor contract[s]."* Allis-Chalmers Corp., 471 U.S. 213. . . .
>
> If the Plaintiffs are claiming that the Defendants'

> failure to consider the rights of Plaintiffs caused Plaintiffs emotional distress, the Court concludes that said claim is preempted [by federal labor law] for said claim is "inextricably intertwined with consideration of the terms of the [various] labor contract[s]." *Id.* at 213.
>
> If the Plaintiffs are claiming that [by withholding relevant information about the collective bargaining agreement,] Defendants caused Plaintiffs emotional distress, the Court concludes that said claim must be preempted . . . as the evaluation of such a claim "is inextricably intertwined with consideration of the terms of the [various] labor contract[s]." *Id.*
>
> If the Plaintiffs are claiming that Defendants' alleged conduct in concealing *the fact* that a vote was to be held caused the Plaintiffs emotional distress, the Court concludes that said claim is *not* preempted by § 301 of the LMRA. Regardless of whether the proposed changes to the collective bargaining agreements would have a major or minor effect upon Plaintiffs, it could be argued that Defendants' alleged conduct in denying Plaintiffs the *right to participate in decision making* caused Plaintiffs emotional distress.

J.A. 123-26. (Italics supplied.)

Plaintiffs rely on *Farmer v. United Brotherhood of Carpenters and Joiners of America, Local 25*, 430 U.S. 290, 97 S. Ct. 1056 (1977) to uphold the judgment of the court below that some of their emotional distress claims are not completely preempted. They also rely on *Farmer* to argue that the court erred in holding that other emotional distress claims were fully preempted. This reliance is misplaced.

In *Farmer*, the plaintiff, a vice-president of a local union, developed sharp differences with other officers of

the local over union policies. The local ran a closed hiring hall. Plaintiff alleged that as a result of his policy disagreement with the leadership of the local, he was discriminated against when jobs were assigned at the hiring hall. He also alleged that he was subjected to a campaign of vituperation and harassment when he came to the union hall. He filed suit in California state court, alleging that union officials had intentionally engaged in outrageous conduct causing him severe emotional distress. In the same action, he also alleged that the local officials' discrimination against him breached the relevant collective-bargaining agreement and his membership contract with the union. The state court dismissed his discrimination and breach of contract claims as completely preempted, but allowed his emotional distress claim to go to the jury. The case ultimately came to the Supreme Court, which upheld the state trial court's exercise of jurisdiction over the emotional distress claims.

The premise of the court's reasoning was that the complete preemption doctrine should not be applied in cases where "the State . . . has a substantial interest in protecting its citizens" from tortious conduct, 400 U.S. at 302, 97 S. Ct. at 1064, or where the activity at issue is merely peripheral to the concerns of federal labor law, 400 U.S. at 297, 97 S. Ct. at 1061. On the other hand, "[t]o leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between the power asserted by Congress and the requirements imposed by state law. 400 U.S. at 296, 97 S. Ct. at 1061.

Applying these consideration to the case before it, the Supreme Court held:

> No provision of the National Labor Relations Act protects the "outrageous conduct" complained of . . . . Regardless of whether the operation of the hiring hall was unlawful or lawful under federal statutes, there is no federal protection for conduct on the part of union officers which is so

> outrageous that "no reasonable man in civilized society should be expected to endure it." . . .
>
> The State, on the other hand, has a substantial interest in protecting its citizens from the kind of abuse [complained of]. That interest is no less worthy of recognition because it concerns protection from emotional distress caused by outrageous conduct, rather than protection from physical injury . . . or damage to reputation.
>
> * * *
>
> On balance, we cannot conclude that Congress intended to oust state-court jurisdiction over actions for tortious activity such as that alleged in this case. At the same time, we reiterate that concurrent state-court jurisdiction cannot be permitted where there is a realistic threat of interference with the federal regulatory scheme. [Neither] union discrimination in employment opportunities nor [threats of discrimination can in themselves] form the underlying "outrageous" conduct on which the state-court action is based . . . . [S]omething more is required . . . . [I]t is essential that the state tort be either unrelated to the employment discrimination or a function of the particularly abusive manner in which the discrimination is accomplished or threatened rather than a function of the actual or threatened discrimination itself.
>
> Two further limitations deserve emphasis. Our decision rests in part on our understanding that California law permits recovery only for emotional distress sustained as a result of "outrageous" conduct. The potential for undue interference with federal regulation would be intolerable if state tort recoveries could be based on the type of robust language and clash of strong personalities that may be commonplace in various labor contexts.

400 U.S. at 302, 305-06, 97 S. Ct. at 1064, 1066.

Although the court below did not express itself in these terms, its decision can be understood as analogizing the fact of withholding information about the 1979 collective bargaining agreement in this case to the hiring discrimination alleged in *Farmer*. The decision can also be understood as analogizing the manner in which the information was withheld in this case to the manner in which the plaintiff in *Farmer* was abused. The analogies appear to establish the boundary between the central concerns of federal labor policy and the unpreempted interests of state law in protecting its citizens. In this case, the line divides the claim that information was allegedly withheld from the claim that it was withheld in an abusive manner.

We are unpersuaded that the line has been drawn correctly, appealing though the distinctions of the court below are on first inspection. Although it is theoretically possible that union leaders urging the ratification of a collective-bargaining agreement *might* behave outrageously toward other union members, no outrageous conduct has been alleged in this case. The substance of plaintiffs' complaint is that material information about the 1979 collective-bargaining agreement was withheld from them. This claim goes to the quality of their union representation and the fairness of their employer's labor practices, issues central to the concerns of federal labor law. Without specific allegations of outrageous conduct on the part of the union or the employer in securing the ratification of the 1979 collective-bargaining agreement, we find the state interest in adjudicating plaintiffs' emotional distress claims too insubstantial to defeat complete preemption.

Accordingly, we affirm the district court's holding that plaintiffs' emotional distress claims, in so far as plaintiffs allege that information was withheld from them, are completely preempted. We reverse the district court's holding that plaintiffs' emotional distress claims, in so far

as they refer to defendants' conduct, are not completely preempted.

V

For the reasons given above, the district court's dismissal of plaintiffs' complaint is **AFFIRMED**. The court's remand of plaintiffs' emotional distress claims to state court is **VACATED**. The case is **REMANDED** with instructions to **DISMISS** the complaint **WITH PREJUDICE** in its entirety.

APPENDIX B

NAMES OF PETITIONERS (817):

1) John J. Adkins;2) Alva L Alexander, Jr.;3) Jerry L. Alexander; 4) Robert L. Alexander; 5) Melville G. Allemang; 6) Dewey Alley; 7) Donald Anderson; 8) Richard Andruskewicz; 9) Paul L Arahood; 10) Patricia A. Arnett; 11) Paul Douglas Arrington; 12) C. Douglas Astor; 13) Larry Allan Austin; 14) Charles E. Bach; 15 Lester Payne Backus; 16) Barry L. Bahns; 17) John R. Bailey; 18) Lester Bair; 19) Herman L Baker; 20) Walter C. Baker; 21) James L Barnes; 22) Harry Bausmith; 23) Henry A. Beasly; 24) Janet E. Stivers Beckett; 25) Larry L. Belue; 26) Thomas F. Bledsoe; 27) Paul E. Boggs; 28) Robert L. Bowling, Sr.; 29) Raleigh L. Brewer; 30) Robert Brock; 31) Darryl Patrick Brown; 32) Michael R. Brown; 33) Roger D. Brown; 34) Ross T. Brown; 35) Larry Burile; 36) Wendell C. Burr; 37) Darrell H. Burton; 38) Larry J. Camp; 39) Glenn Campbell; 40) Terry Carman; 41) Lory Carpenter; 42) Billey Ray Carr; 43) Tommy Roger Cavey; 44) Thelma K. Chain

45) Donalfd F. Chambers; 46) Edith C. Chandler; 47) Eddie Childers, Sr.; 48) William F. Clark; 49) Benjamin D. Cleary; 50) Homer Climons; 51) Lester Collins; 52) Herman Combs; 53) James C. Combs; 54) Phiilip E. Combs; 55) Roger K. Combs; 56) Cecil W. Conrald;. 57) Terry L. Conway; 58) Denver Cook; 59) Alfred Cooper; 60) James A. Cooper; 61) Bruce W. Cordray; 62) Curt Couch; 63) Joseph M. Courter; 64) Charles W. Cowens; 65) Larry D. Cox; 66) Harry Crego; 67) Sammy Crouch; 68) Harold L. Cundif; 69) Douglas E. Curtis; 70) John E. Dales; 71) Thomas M. Dalton; 72) James Darst; 73) Gary L. Davidson; 74) Richard C. Davidson; 75) Robert M. Davidson; 76) Dean A. Davis; 77) Gary H. Day; 78) John E. Deak; 79) Michael W. Deck; 80) jhn A. Denman; 81) Robert Dennison; 82) James D. Dillow; 83) Lloyd D. Eaton, Jr.; 84) Larry E. Edington; 85) Donald Ellinger; 86) David B. Evans; 87) Eddie R. Evans; 88) LaVaughn Farris; 89) Michael V. Finley; 90) Dennis B. Forsyth; 91) Robert C. Freeman;

92) Harold French; 93) Lloyd E. Gebbard; 94) Richard Garberson; 95) Howard E. Gardner; 96) Floyd A. Garrod, Jr.; 95) Larry Garwood; 93) Bernard L. George; 99) William C. Gibson; 100) Donald D. Gilbert; 101) Harry E. Gisewite; 102) William Glenn; 103) Otis J. Glover; 104) Thomas R. Goins; 105) Mac S. Green; 106) Leonard H. Griffen; 107) Stanley D. Griffith; 108) Marvin D. Grooms; 109) Williams R. Grooms; 110) Kenneth D. Gropengieser; 111) James A. Grosshart; 112) Donald G. Gulasa; 113) George Gurdon; 114) Howard Guy, Jr.; 115) Forrest B. Gwinn; 116) Ronnie L Hall; 117 Danny R. Hamm; 118) John Hamm; 119) Ronald e. Hampton; 120) Donald E. Hardy; 121) Dennie M. Hardyman; 122) David Lee Hargrove; 123) Stephen A. Harlow; 124) John Harowski, Jr.; 125) James D. Harris; 126) Ronald L. Hartbarger; 127) Delbert Hatton; 128) Joseph Haynes; 129) Wilson D. Helfinstine; 130) George C. Helton; 131) Gary Hemberger; 132) Jerry W. Henderson; 133) Lovell Henderson;

134) Roger S. Henderson, Sr.; 135) John D. Hendricks; 136) LeRoy R. Herdman; 137) Glen E. Higgins; 138) Leslie Higgins; 139 Cletus Holbert; 140 Gary A. Holliday; 141) James C. Hosey; 142) Jack R. Howard, Sr.; 143) Carl W. Hudson; 144) Bruce A. Hughley, Sr.; 145) Richard J. Hunter; 146) Norman E. Hurst; 147) James Ishman, Sr.; 148) Bradley A. Ivey; 149) Charles H. Jackson; 150) Robert Jackson; 151) Thaddeus S. Jackson; 152) Alfred R. Jamison; 153) James M. Jellison; 154) David Jends; 155) Fred A. Jennings; 156) Bobby Gene Johnson; 157) James L Johnson; 158) Leonard D. Johnson; 159) Richard E. Johnston; 160) Jerry G. Jones; 161) John A. Jones; 162) Lonnie L Kilburn; 163) Sylvester Kindred; 164) Larry W. King; 165) Gerd Klingler; 166) John Knight; 167) Donald D. Konz; 168) John E. Laird; 169) Gary P. Layne; 170) Charles David Leadingham; 171) Edward J. Leary; 172) Frank G. Lee; 173) Norman D. Lee; 174) Timothy L Leonard; 175) Ronald Leopold; 176) Stephen M. Lett;

177) Lester D. Leturgez; 178) John E. Lewis, Jr.; 179) Ronnie J. Lewis; 180) Charles E. Lilly; 181) C.M. Loesch; 182) Robert Lofty; 183) Thomas K. Lngenecker; 184) Glenn M. Lykins; 185) Richard McCarty; 186) Thomas J. McGarvey; 187) Franklin B. McIlvain; 188) Robert G. McIntosh; 189) Emery Myles McMahan; 190) Harrison Madden, Jr.; 191) Ronald E. Malone; 192) Marion Marshall; 193) Mary A. Marshall; 194) Michale L. Massis; 195) David L. Meadows; 196) George Michael Mercer; 197) James L. Merkison; 198) Gordon L. Merritt; 199) Richard Lee Mikesell; 200) Gary E. Miller; 201) Kenneth Lee Miller; 202) Ronnie D. Miller; 203) Ronald O. Miller; 204) Bob Minney; 205) Lowell P. Mitchell; 206) Newell Mitchell; 207) Richard C. Mobley; 208) Harvey L. Monbeck, Sr.; 209) John R. Monroe; 210) Glenda L. Moore; 211) John D. Moore; 212) Mildred L Moore; 213) Marvin L. Morris; 214) Richard Edward Mulll; 215) Claren ce L. Mullins; 216) James A. Mutter;

217) Daniel Newsome; 218) Dale H. Nicholas; 219) Sylvia S. Nickell; 220) Donald Lee Noble; 221) Donald L. Null; 222) William R. O'Connell; 223) Patrick Lee O'Shea; 224) Ronnie L. Osborne; 225) Harry J. Otto; 226) Charles Pauley; 227) Michael R. Pennington; 228) Charles A. Petrey; 229) Robert e. Petry; 230) James Vernon Peyton; 231) James Phelps; 232) Wilburn G. Pigman; 233) mihaly A. Polczer; 234) Thomas W. Porter; 235) Darryl L. Powell; 236) Dennis Harry Powell; 237) Vernol H. Powell; 238) Thomas Wayne Presley; 239) Howard S. Price; 240) Charles W. Prosser; 241) David Pryor; 242) Lee Bruce Pryor; 243) Michael Dean Puterbaugh; 244) James C. Pyles; 245) Thomas; J. Ramsey; 246) Kurotibishi Ali Rashid; 247) David Eugene Rauch; 248) Michael L. Rauch; 249) William G. Retherford; 250) David T. Rhoden; 251) Paul R. Rickman; 252) Rufus Ridley; 253) Robert Rinehart, Jr.; 254) Lawrence Roark, Jr.; 254) Lawrence Roark, Jr.; 255) Dawn Cherie Roman; 256) Randle Rose;

257) Michael L. Rudd; 258) Lonnie R. Saunders; 259) William L. Schemel; 260) Henery e. Schleiger; 261) Glenn E. P. Scholz; 262) Robert G. Schroth; 263) Donald E. Shearer; 264) Harlis H. Sheets; 265) Philip H. Sheidan; 266) James L. Sherrit; 267) Earl Shilt, Jr.; 268) Jerry L. Short; 269) Tommy A. Short; 269) Tommy A. short; 270) Sheldon Sisco; 271) Ronald L. Skinner; 272) Larry O. Smith; 273) Robert Smith; 274) James Walter Spangler; 275) Lonnie Spencer; 276) Robert F. Stall; 277) Dennis Standifer; 278) James L. Steiner; 279) James Patrick Stiens; 280) Timothy L. Stuart; 280) Raymond Swope; 2820 Jerry A. Taylor; 283) Travis K. Taylor; 284) Raymond Terrell, Jr.; 285) Richard. L. Terrell; 286) Charles Thatcher; 287) Kenneth E. Thomas; 288) James T. Titus; 289) Jon R. Titus; 290) Dale R. Thompkins; 291) Ivan E. Tufts; 292) Danny Turner; 293) Paul Tyra; 294) Edgar P. Underwood, Sr.; 295) John L. VanCleve; 296) James P. Vaughn, Jr.; 297) David L. Vires; 298) Gary Wagers; 299) George Lewis Walker;

300) Lawrence E. Warren; 301) Bill L. Waters; 302) Donald P. Watkins; 303) David M. Weaver; 304) John E. Welch; 305) James E. West; 306) Duane T. Wheatley; 307) Leona A. Whitey; 308) Will White; 309) Donald D. Wigginton; 310) Autsin S. Wiley; 311) Kenneth R. Wiley; 312) Garry G. Williams; 313) James L Williams; 314) Roy D. Williamson; 315) Ronald Williford; 316) Paul s. Willis; 317) Ralph Edward Willis; 318) Roger L. Wills; 319) Robert J. Wilson; 320) Rusell W. Windsor; 321) Richard L. Winkler; 322) Charles H. Witham; 323) Rober S. Wynn; 324) James E. Wysocki; 325) Rober M. Yerian; 326) Paul e. Zimmerman; 327) Timothy R. Zwick; 328) Robert L. Ashman; 329) Gary W. Carmack; 330) George J. Eikens, II; 331) John F. Evans; 332) Gaylord F. Fitzwater; 333) V.L. Frenchf; 334) George E. Frymyer, Jr.; 335) Keith Gabbard; 336) Quentin E. Mobley; 337) Clifford H. Ruble; 338) John P. Ruble 339) Dwight A. Smith; 340) Joseph H. Smith, Jr.; 341) Clarence W. Tipton; 342) Cary G. Wogomon;

343) Fayetta Alexander; 344) Jacquelin Alexander; 345) Peggy J. Alexander; 346) Dorothy J. Allemang; 347) Louetta M. Alley; 348) Patricia g. Andruskewicz; 349) Janic A. Arahood; 350) Linda L. Arrington; 351) Elaine A. Astor; 352) Pamela J. Austin; 353) Norma J. Backus; 354) Patricia A. Bahns; 355) Patty A. Bailey; 356) Donnita Bari; 357) Joyce A. Barnes; 358) Gloria Bausmith; 359) Jan M. Belue; 360) Doris J. Brewer; 361) Cheryl L. Brock; 363) Jeanette E. Brown; 363) Linda R. Brown; 363a) Lois D. Brown; Sandra K. Brown; 365) Beth Burile; 366) Kathryn Burr; 367) Pamela R. Burton; 368) Deborah J. Carman; 369) Elizabeth J. Carr; 370) Linda Sue Cavey; 371) Madeliene C. Chambers; 372) Levie Childers; 373) Chalene L. Clark; 374) Yvonne M. Cleary; 375; Patricia A. Clemons; 376) Ina Collins; 377) Barbara Combs; 378) Eunice Combs; 379) Lillian M. Combs; 380) Vikki L. Conrad; 381) Sharon Cook; 382) Cheryl A. Cooper; 383) Janice A. Cordray; 384) Karen S. Couch;

385) Catherine A. Courtier; 386) Joan Cowens; 387) Gayle Cox; 388) Gisela Crouch; 389) Chris C. Cundif; 390) Hazel M. Curtis; 391) Patricia J. Dalton; 392) Vi Darst; 393) Doris Davidson; 394) Gladys K. Davidson; 395) Karen Davidson; 396) Sheila F. Davis; 397) Judith A. Day; 398) Peggy L. Deak; 399) Susan L. Denman; 400) Kay E. Dennision; 401) Sherry O. Eaton; 402) Jeanetta M. Edington; 403) Lana Ellinger; 404) Kathleen R. Evans; 405) Lou Ann Evans; 406) Vivian J. Finley; 407) Loraine Forsyth; 408) Beverly J. Freeman; 409) Cathy French; 410) Verna Gabbard; 411) Pat Garberson; 412) Susan E. Gardner; 413) Janet Garrod; 414) Beverly Garwood; 415) Pauline L. George; 416) Peggy L. Gilbert; 417) Rowena Gisewite; 418) Helen Glover; 419) Alic S. Goins; 420) Betty L. Green; 421) Carolyn S. Griffen; 422) Cathy M. Griffith; 423) Fran Grooms; 424) Susan K. Grooms; 425) Sandra K. Gropengieser; 426) Yvonne Grosshart; 427) Jane Gulasa; 428) Shirley F. Hall; 429) Gail Hamm; 430) Mary Lou Hamm; 431) Kathryn Hampton; 432) Bobbie F. Hardy; 433) Betty A.

Hardyman; 434) Wanda Hargrove; 435) Patricia S. Harlow; 436) Sharon M. Harowski; 437) Ramona G. Harris; 438) Ruthann Hartberger; 439) Connie Hatton; 440) Betty L. Haynes; 441) Judy A. Helfinstine; 442) Charlotte R. Helton; 443) Linda C. Henderson; 445) Thelma J. Henderson; 446) Chalotte A. Hendricks; 447) Gwyneth W. Herdman; 448) Shirley Higgins; 449) Sandra J. Holliday; 450) Carolyn K. Hosey; 451) Ruby R. Howard; 452) Deborah A. Hudson; 453) Narvelll Hughley; 454) Karen S. Hunder; 455) Dorothy Ishman; 456) Alene Ivey; 457) Gloria A. Jackson; 458) Shirley Jackson; 459) Mary Jamison; 460) Shirley F. Jellison; 461) Denise Jenks; 462) Darlene Jennings; 463) Bertha Johnson; 454) DeeAnna Johnson; 465) Karen S. Johnson; 466) Pat Jones; 467) Reva Kilburn; 468) Ovivia C. Kindred; 469) Carolyn King; 470) Judith A. Klingler; 471) Sharon Knight; 472) Mary K. Layne; 473) Mary M. Leadingham; 474) Wanda S. Leary; 475) Ida Mae Lee; 476) Chreyl A. Lett; 477) Sharon J. Leturgez

478) Nancy Lewis; 479) Rebecca D. Lewis; 480) Janic A. Logty; 481) Vivian D. Lykins; 482) Brenda McCarty; 483) Helen M. McIlvain; 484) Mary Ann McIntosh; 485) Melanie M. McMahan; 486) Evelyn Madden; 487) Gayle Malone; 488) Iva Nell Marshall; 489) Ronald Marshall; 490) Sandra L. Massie; 491) Esther Meadows; 492) Karen Sue Mercer; 493) Helen D. Merkison; 494) Sara Merritt; 495) Norma F. Mikesell; 496) Debbie Miller; 497) Patty L. Miller; 498) Shirley Miller; 499) C. Kaye Minney; 500) Elsie Mitchell; 501) Shirley Mitchell; 502) Quentin E. Mobley; 503) Terry L. Mobley; 504) Elfrieded K. Monbeck; 505) Anna M. Monroe; 506) Shirley Moore; 507) Brenda A. Morris; 508) Gloria L. Mullins; 509) Sandra L. Mutter; 510) Kathleen Newsome; 511) Elizabeth J. Nicholas; 512) Iva Rene Noble; 513) Doris No. Null; 514) Opal M. O'Connell; 515) Eldene O'Shea; 516) Judy A. Osborne; 517) Susan Otto; 518) Dorothy Pauley; 519) Wanda Pennington; 520) Linda Lou Petrey; 521) Dorothy A. Petry

522) JoAnn Petyon; 523) Ruth D. Pigman; 524) Carol Jean Porter; 525) Bessie K. Powell; 526) Berverly L. Powell; 527) Denise M. Presley; 528) Donna Price; 529) Jeanine R. Prosser; 530) Leslie R. Pryor; 531) Linda L. Pryor; 532) Debra E. Puterbaugh; 533) Diane T. Pyles; 534) Shirley S. Ramsey; 535) Ismailia Rashid; 536) Wanda Sue Rauch; 537) Joy B. Retherford; 538) Connie Rhoden; 539) Marilyn K. Rickman; 540) Cayth Ridley; 541) Myra Roark; 542) Cindy Rudd; 543) Linda Saunders; 544) Jeanice Schleiger; 545) Donna Jo Scholz; 546) Shirley E. Schroth; 547) Cynthia A. Shearer; 548) Rosemary Sheets; 549) Carol S. Sheidan; 550) Ellen J. Shilt; 551) Brenda S. Short; 552) Donna S. Short; 553) Marcia Sisco; 554) Lorraine Skinner; 555) Armon Smith; 556) Belinda Sue Spangler; 557) Tabitha Jane Spencer; 558) Judy Stall; 559) Barbara Standifer; 560) Barbara S. Steiner; 561) Betty D. Stiens; 562) Marian Swope; 563) Mafrey Taylor; 564) Patricia Taylor; 565) Brenda S. Terrell; 566) Wanda Terrell;

567) Doris Thatcher; 568) Edna Thomas; 569) Juanita Titus; 570) Phyllis Titus; 571) Rose Turner; Chloie L. Tyra; 573) Rose M. Underwood; 574) Pamela S. VanCleve; 575) Donna C. Vaughn; 576) Dianna Vires; 577) Susan L. Wagers; 578) Sheliah K. Walker; 579) Vicki Warren; 580) Patricia K. Water; 581) Penry L. Watkins; 582) Patsy L. Welch; 583) Fran West; 584) Evelyn K. White; 585) Charmaine Wiley; 586) Tonya L. Wiley; 587) Patsy Y. Williams; 588) Tonya Williams; 589) Diana S. Williamson; 590) Juanita Willis; 591) Linda L. Willis; 592) Juanita J. Wills; 593) Dianne Wilson; 594) Sharon A. Witham; 595) Mary Eloise Wynn; 596) Julie O. Wysocki; 597) Judy Yates; 598) Sharon K. Yerian; 599) Kathleen Zimmerman; 600) Cheryl D. Zwick; 601) Eugene K. Adams; 602) D.E. Agee; 603 Anthony W. Amburgey; 604) James R. Anderson; 605) Ronald O. Applegate; 606) David R. Armstrong; 607) Stephen R. Armstrong 608) Frank Attard; 609) Larry Baker

610) William K. Barnes; 611) Charles T. Bateman 612) Michael Bates; 613) Dallas R. Beaver; 614) Gary Lee Behr; 615) Kenneth W. Bettinger; 616) Jerry Bishop; 617) Michael J. Bishop; 618) Daniel L. Blandford; 619) James R. Blanton; 620) David B. Boggs; 621) James A. Bond; 622) Robert L. Booth; 623) Raymond E. Bostick; 624) Larry D. Brandenburg; 625) Dewey Branson; 626) Harold E. Brooks; 627) Robert O. Brooks, Jr.; 628) Bradley D. Brown; 629) Karl H. Brown; 630) Lloyd G. Brown; 631) Muriel D. Browning; 632) Selena Caldwell; 633) Bernard Campbell; 634) Charlie C. Campbell; 635) Michael D. Carrico; 635a) Joel Carson; 636) Larry E. Chaney; 637) Melvin Clark; 638) Charles M. Collins; 639) George E. Combs; 640) Lee R. Combs; 641) Tommy L. Combs; 641) Tommy L. Combs; 642) Paul M. Copeland; 643) John Cornett; 644) Larry A. Cox; 645) Donald R. Creech; 645a) Gary D. Culberson; 646) Jerry Cutlip; 647) Richard E. Daily; 648) Terry L. Dehart; 649) Dennis C. Elliott;

650) William Ray Elza; 651) Starlin W. Engle; 652) Robert E. Evans; 653) Ronnie B. Bannin; 654) Felix B. Fleming; 655) Richard Gabbard; 655a) Robert E. Garrett; 656) Dolores O. Griffitts; 657) Linda F. Grooms; 658) Curtis Haddix; 659) James L Haning; 660) Robert A. Hansford; 661) Eddie D. Hardyman; 662) Everett A. Harville; 663) Dannis W. Haslam; 664) Barbara C. Hill; 665) William M. Hoblit; 666) Gary Hollingsworth; 667) Loren Howard; 668) Larry E. Huling ; 669) Carl W. Husssong; 670) Charles D. Hutchins; 671) Michael L. Hutchinson; 672) Earl J. Isaacs; 673) Anis C. Ison; 674) Junior A. James; 675) Gary Johns; 676) Michael Johns; 677) Banonzel Johnson; 678) Dennis C. Johnson; 678a) Michael Johnson; 679) Wilbur R. Keets; 680) Harold R. Keener; 681) Ray D. Kershner; 682) William G. Kettler; 683) David J. King; 684) Michael Kretzer; 685) Keith K. Lainhart; 686) David A. Landis; 688) Ronnie Lee Leisure; 689) Larry J. Linder; 690) Steven L. Linkhart; 691) Dennis E. Loomis;

692) John Lummis; 693) Tony McKiddy, Jr.; 694) Dan McWain; 695) Edward maise; 696) Gary S. Marcum; 697) Edward Mattis; 698) Frank V. Mauro; 699) Tex H. Messer; 699a) Robert D. Miller; 700) Donnie Moore;702) Barry A. Must; 703) Rolland E. Neves; 704) Leonard Overholser; 705) Larry G. Partin; 706) James F. Patterson; 707) Anthony Perkins; 708) Donald W. peters; 709) Franklin W. Pheanis; 710) Claudio N. Ponciano; 711) Milton T. Poynter, Jr.; 712) Ivan M. Prescott; 713) Harold T. Rawlins; 714) Melvin K. Ray; 715) Lawrence J. Rhoades; 716) Franklin D. Rose; 717) Norman Rose; 718) Edward L. Salyer; 719) Tommie Salyer; 720) Ronnie L Shackelford; 721) Nelson K. Sherwood; 721a) Richard J. Shockey; 722) Wilburn Simpson; 723) Anthony C. Smith; 734) Finley E. Smith; 725) James Smith; 726) James R. Smith; 727) Richard J. Smith; 728) Ermin Spradlin; 729) Hughie W. Sprinkle; 730) Howard H. Stanze, Jr.;731) Philip E. Stivers; 732) Melvin L. Stone; 733) Ronald L. Szabo;

734) Daniel E. Tabor; 735) Johnnie C. Thompson; 736) Kendrick M. Thompson; 737) Charles Thresher; 738) Sammie Turner; 739) Leonard Vaughn, Jr.; 740) David Wade; 741) Gary R. Watson; 742) Donnie V. Webb; 743) Ferman L. Wells; 744) Gary Williams; 745) M. Denet Williams; 746) Dennis E. Woodruff; 747) Harold D. Young; 748) Gayle E. Armstrong; 749) Leotine E. Armstrong; 749) Leotine E. Armstrong; 750) Jo Ann Ashman; 751) Karen Attard; 752) Linda Beaver; 753) Peggy Ann Livingston Behr; 754) Peggy Jo Bettinger; 755) Mathiilde Bishop; 756) Glenna M. Bishop; 757) Janis Boggs; 758) Sharon L Bond; 759) Marcia Bostick; 760) Wilma Dean Bowling; 761) Susan Brown; 762) Judy Carpenter; 763) Hilda Cornett; 764) Becky A. Cos; 765) Connie Creech; 766) Mildred K. Dales; 767) Carol A. Elza; 768) Joyce Fannin; 769) Judy Gabbard; 770) Jonda R. Haning; 771) Sharon K. Hansford; 772) Dorothy Hoblit; 773) Brenda Howard; 774) Myrtle F. Huling; 775) Cheryl J. Hutchinson;

776) Patricia Johnson; 777) Mary K Keets; 778) Lois J. Keener; 779) Billie J. Kretzer; 780) Ruby Leisure; 781) Delorise M. Leopold; 782) Karla Loomis; 783) Alice Lummis; 784) Vivian R. McKiddy; 785) Kathleen McWain; 786) Betty M. Pheanis; 787) Mary A. Ponciano; 788) Melanie A. Poynter; 789) Deborah K. Prescott; 290) Betty C. Rawlins; 791) Carolyn Ray; 792) Janice L. Rose; 793) Kathy A. Salyer; 794) Patricia A. Sherritt; 795) Sharon L. Sherwood; 796) Myrna Smith; 797) Fay E. Spradlin; 798) Joan E. Stivers; 799) Christine Stone; 800) Joan Szabo; 801) Kathleen Thompson; 802) Deborah K. Watson; 803) Ruth Ann Webb; 804) Mary A. Woodruff; 805) Shirley Culberson; 806) Delores Johnson; 807) Helen Maise; 808) Gayle C. Shockey; 809) Bonnie F. Carmack; 810) Mary A. Evans; 811) Rita M. Fitzwater; 812) Sandra G. French; 813)Pat Frymyer; 814) Nancy Gabbard; 815) Linda D. Ruble; 816) Carol J. Ruble; 817) Teresa L. Wogomon